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THE SUPREME COURT OF JUDICATURE ACTS,

ETC.

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THE SUPREME COURT OF JUDICATURE ACTS,

AND THE

APPELLATE JURISDICTION ACT, 1876.

WITH

RULES OF COURT AND FORMS TO MAY, 1880.

ANNOTATED SO AS TO FORM A

MANUAL OF PRACTICE.

ADAPTED CHIEFLY TO THE

Chancery and Common Law Divisions.

BY

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PREFACE.

THIS work was contemplated many months ago, owing to the interval which had elapsed without the appearance of a new edition of any of the numerous and able works of previous commentators. It was with diffidence that the Authors contemplated the onerous nature of the task before them. No one can be more fully alive than they to its deficiencies and shortcomings, but still they trust that it may be found of some practical benefit to the Profession.

The progress of the work has been unavoidably delayed by the promulgation of an unusually large number of rules and forms in the course of the present year.

A Table of Analogous Procedure previous to the Judicature Acts and a Time-Table have been appended for convenient reference. The Table of Cases has been utilized for giving references in addition to those contained in the text. The usual reference given in the text is to the Law Reports, when the case is reported there, unless some special point seemed more fully illustrated elsewhere.

July 1*st*, 1880.

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ADDENDA AND CORRIGENDA.

On page 36, line 28 from top, *for* "reward" *read* "award."
,, 60, line 6 from top, *after* "Bankruptcy," *insert* "prevails."
,, 178, line 6 from top, *for* "Orders IV. and V." *read* "Order V."
,, 183, line 19 from top, *for* "defendant" *read* "defend."
,, 190, head line, *for* "Order XXVXI." *read* "XXXVI."
,, 213, head line, *omit* "Order XLIII."
,, 219, head line, *omit* "Order XLVI."
,, 242, line 10 from top, *for* "Field *v.* G. W. R.," *read* "Field *v.* G. N. R."
,, 249, line 4 from top, *for* "1 C. P. D." *read* "4 C. P. D."
,, 254, line 24 from top, *for* "26 W. R." *read* "28 W. R."

After "Hunt *v.* The London Real Property Co.," page 201, *insert* "An application for a new trial must be to the Divisional Court, but if only an issue be directed to be tried, the action still remains in the Chancery Division (Jones *v.* Baxter, 5 Ex. D., 275)."

After "the Biola," page 168, *insert* "The Radnorshire, 49 L. J. P. D., 48."

After "Rhodes *v.* Liverpool Investment Co.," page 248, *insert* "Where the judge has actually taken and furnished a note, the right of appeal exists (Seymour *v.* Coulson, 5 Q. B. D., 359)."

SUPREME COURT OF JUDICATURE ACT, 1873.

36 & 37 Vict. c. 66.

An Act for the constitution of a Supreme Court, and for other purposes relating to the better Administration of Justice in England; and to authorise the transfer to the Appellate Division of such Supreme Court of the Jurisdiction of the Judicial Committee of Her Majesty's Privy Council.

[5th August, 1873.]

WHEREAS it is expedient to constitute a Supreme Court, and to make provision for the better administration of justice in England:

And whereas it is also expedient to alter and amend the law relating to the Judicial Committee of Her Majesty's Privy Council:

Be it enacted by the Queen's most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows:

Preliminary.

1. This Act may be cited for all purposes as the "Supreme Court of Judicature Act, 1873." Short title.

2. (Repealed by the Act of 1874.)

Part I.

Constitution and Judges of Supreme Court.

3. From and after the time appointed for the commencement of this Act, the several Courts hereinafter mentioned, (that is to say,) the High Court of Chancery of England, the Court of Queen's Bench, Union of existing Courts into one Supreme Court.

the Court of Common Pleas at Westminster, the Court of Exchequer, the High Court of Admiralty, the Court of Probate, the Court for Divorce and Matrimonial Causes, *and the London Court of Bankruptcy*, shall be united and consolidated together, and shall constitute, under and subject to the provisions of this Act, one Supreme Court of Judicature in England.

Repealed by Act of 1875, sec. 9.

The practice in the Divorce Division remains unaltered. See Order LXII.

Division of Supreme Court into a Court of original and a Court of appellate jurisdiction.

4. The said Supreme Court shall consist of two permanent Divisions, one of which, under the name of "Her Majesty's High Court of Justice," shall have and exercise original jurisdiction, with such appellate jurisdiction from inferior Courts as is hereinafter mentioned, and the other of which, under the name of "Her Majesty's Court of Appeal," shall have and exercise appellate jurisdiction, with such original jurisdiction as hereinafter mentioned as may be incident to the determination of any appeal.

Constitution of High Court of Justice.

5. Her Majesty's High Court of Justice shall be constituted as follows:—The first Judges thereof shall be the Lord Chancellor, the Lord Chief Justice of England, the Master of the Rolls, the Lord Chief Justice of the Common Pleas, the Lord Chief Baron of the Exchequer, the several Vice-Chancellors of the High Court of Chancery, the Judge of the Court of Probate and of the Court for Divorce and Matrimonial Causes, the several Puisne Justices of the Courts of Queen's Bench and Common Pleas respectively, the several Junior Barons of the Court of Exchequer, and the Judge of the High Court of Admiralty, except such, if any, of the aforesaid Judges as shall be appointed ordinary Judges of the Court of Appeal.

Subject to the provisions hereinafter contained, whenever the office of a Judge of the said High Court shall become vacant, a new Judge may be appointed thereto by Her Majesty, by Letters Patent. All persons to be hereafter appointed to fill the places of the Lord Chief Justice of England, the Master of the Rolls, the Lord Chief Justice of the Common Pleas, and the Lord Chief Baron, and their successors respectively, shall continue to be appointed to the same respective offices, with the same precedence, and by the same respective titles, and in

the same manner, respectively, as heretofore. Every Judge who shall be appointed to fill the place of any other Judge of the said High Court of Justice shall be styled in his appointment "Judge of Her Majesty's High Court of Justice," and shall be appointed in the same manner in which the Puisne Judges and Junior Barons of the Superior Courts of Common Law have been heretofore appointed: *Provided always that if at the commencement of this Act the number of Puisne Justices and Junior Barons who shall become Judges of the said High Court shall exceed twelve in the whole, no new Judge of the said High Court shall be appointed in the place of any such Puisne Justice or Junior Baron who shall die or resign while such whole number shall exceed twelve, it being intended that the permanent number of Judges of the said High Court shall not exceed twenty-one.*

Repealed by the Act of 1875, s. 3.

All the Judges of the said Court shall have in all respects, save as in this Act is otherwise expressly provided, equal power, authority, and jurisdiction; and shall be addressed in the manner which is now customary in addressing the Judges of the Superior Courts of Common Law.

The Lord Chief Justice of England for the time being shall be President of the said High Court of Justice in the absence of the Lord Chancellor.

6. The constitution of the Court of Appeal is now regulated by sec. 4 of the Act of 1875. This section is therefore omitted.

7. The office of any Judge of the said High Court of Justice, or of the said Court of Appeal, may be vacated by resignation in writing, under his hand, addressed to the Lord Chancellor, without any deed of surrender; and the office of any Judge of the said High Court shall be vacated by his being appointed a Judge of the said Court of Appeal. The said Courts respectively shall be deemed to be duly constituted during and notwithstanding any vacancy in the office of any Judge of either of such Courts.

Vacancies by resignation of Judges and effect of vacancies generally.

8. Any barrister of not less than ten years' standing shall be qualified to be appointed a Judge of the said High Court of Justice; and any person who if this Act had not passed would have been qualified by law to be appointed a Lord Justice of the Court of Appeal in Chancery, or has been a Judge of the High

Qualifications of Judges. Not required to be Serjeants-at-Law.

Court of Justice of not less than one year's standing, shall be qualified to be appointed an ordinary Judge of the said Court of Appeal: Provided, that no person appointed a Judge of either of the said Courts shall henceforth be required to take, or to have taken, the degree of Serjeant-at-Law.

9. Repealed by sec. 5 of the Act of 1875.

10. Repealed by sec. 6 of the Act of 1875.

Saving of rights and obligations of existing Judges.

11. Every existing Judge, who is by this Act made a Judge of the High Court of Justice or an ordinary Judge of the Court of Appeal, shall, as to tenure of office, rank, title, salary, pension, patronage, and powers of appointment or dismissal, and all other privileges and disqualifications, remain in the same condition as if this Act had not passed; and, subject to the change effected in their jurisdiction and duties by or in pursuance of the provisions of this Act, each of the said existing Judges shall be capable of performing and liable to perform all duties which he would have been capable of performing or liable to perform in pursuance of any Act of Parliament, law, or custom if this Act had not passed. No judge appointed before the passing of this Act shall be required to act under any Commission of Assize, Nisi Prius, Oyer and Terminer, or Gaol Delivery, unless he was so liable by usage or custom at the commencement of this Act.

Service as a Judge in the High Court of Justice, or in the Court of Appeal, shall, in the case of an existing Judge, for the purpose of determining the length of service entitling such Judge to a pension on his retirement, be deemed to be a continuation of his service in the Court of which he is a Judge at the time of the commencement of this Act.

Provisions for extraordinary duties of Judges of the former Courts.

12. If, in any case not expressly provided for by this Act, a liability to any duty, or any authority or power, not incident to the administration of justice in any Court, whose jurisdiction is transferred by this Act to the High Court of Justice, shall have been imposed or conferred by any statute, law, or custom upon the Judges or any Judge of any of such Courts, save as hereinafter mentioned, every Judge of the said High Court shall be capable of performing and exercising, and shall be liable to perform and empowered to exercise every such duty, authority, and

power, in the same manner as if this Act had not passed, and as if he had been duly appointed the successor of a Judge liable to such duty, or possessing such authority or power, before the passing of this Act. Any such duty, authority, or power, imposed or conferred by any statute, law, or custom, in any such case as aforesaid, upon the Lord Chancellor, the Lord Chief Justice of England, the Master of the Rolls, the Lord Chief Justice of the Common Pleas, or the Lord Chief Baron, shall continue to be performed and exercised by them respectively, and by their respective successors, in the same manner as if this Act had not passed.

Salaries of future Judges.

13. Subject to the provisions in this Act contained with respect to existing Judges, there shall be paid the following salaries, which shall in each case include any pension granted in respect of any public office previously filled by him, to which the Judge may be entitled;

To the Lord Chancellor, the sums hitherto payable to him;

To the Lord Chief Justice of England, the Master of the Rolls, the Lord Chief Justice of the Common Pleas, and the Lord Chief Baron of the Exchequer, the same annual sums which the holders of these offices now respectively receive;

To each of the ordinary Judges of the Court of Appeal; and

To each of the other Judges of the High Court of Justice, the sum of five thousand pounds a year.

Repealed by the 2nd Sch. Act of 1875.

No salary shall be payable to any additional Judge of the Court of Appeal appointed under this Act; but nothing in this Act shall in any way prejudice the right of any such individual Judge to any pension to which he may be by law entitled.

Retiring pensions of future Judges of High Court of Justice, and ordinary Judges of Court of Appeal.

14. Her Majesty may, by Letters Patent, grant to any Judge of the High Court of Justice, or to any ordinary Judge of the Court of Appeal who has served for fifteen years as a Judge in such Courts, or either of them, or who is disabled by permanent infirmity from the performance of the duties of his office, a pension, by way of annuity, to be continued during his life:

In the case of the Lord Chief Justice of England,

the Master of the Rolls, the Lord Chief Justice of the Common Pleas, and the Lord Chief Baron of the Exchequer, the same amount of pension which at present might under the same circumstances be granted to the holder of the same office:

In the case of any ordinary Judge of the Court of Appeal or any other Judge of the High Court of Justice, the same amount of pension which at present might under the same circumstances be granted to a Puisne Justice of the Court of Queen's Bench.

Salaries and pensions how to be paid.

15. Subject to the provisions of this Act contained with respect to existing Judges, the salaries, allowances, and pensions payable to the Judges of the High Court of Justice, and the ordinary Judges of the Court of Appeal respectively, shall be charged on and paid out of the Consolidated Fund of the United Kingdom of Great Britain and Ireland, or the growing produce thereof: such salaries and pensions shall grow due from day to day, but shall be payable to the persons entitled thereto, or to their executors or administrators, on the usual quarterly days of payment, or at such other periods in every year as the Treasury may from time time determine.

Part II.

Jurisdiction and Law.

Jurisdiction of High Court of Justice.

16. The High Court of Justice shall be a Superior Court of Record, and subject as in this Act mentioned, there shall be transferred to and vested in the said High Court of Justice the jurisdiction which, at the commencement of this Act, was vested in, or capable of being exercised by, all or any of the Courts following: (that is to say,)

(1.) The High Court of Chancery, as a Common Law Court, as well as a Court of Equity, including the Jurisdiction of the Master of the Rolls, as a Judge or Master of the Court of Chancery, and any jurisdiction exercised by him in relation to the Court of Chancery as a Common Law Court;

(2.) The Court of Queen's Bench;

(3.) The Court of Common Pleas at Westminster;

(4.) The Court of Exchequer, as a Court of Revenue, as well as a Common Law Court;
(5.) The High Court of Admiralty;
(6.) The Court of Probate;
(7.) The Court for Divorce and Matrimonial Causes;
(8.) *The London Court of Bankruptcy.* Repealed by Sec. 9 of the Act 1875.
(9.) The Court of Common Pleas at Lancaster;
(10.) The Court of Pleas at Durham;
(11.) The Courts created by Commissions of Assize, of Oyer and Terminer, and of Gaol Delivery, or any of such Commissions:

The jurisdiction by this Act transferred to the High Court of Justice shall include (subject to the exceptions hereinafter contained) the jurisdiction which, at the commencement of this Act, was vested in, or capable of being exercised by, all or any one or more of the Judges of the said Courts, respectively, sitting in Court or Chambers, or elsewhere, when acting as Judges or a Judge, in pursuance of any statute, law, or custom, and all powers given to any such Court, or to any such Judges or Judge, by any statute; and also all ministerial powers, duties, and authorities, incident to any and every part of the jurisdictions so transferred.

17. There shall not be transferred to or vested in the said High Court of Justice, by virtue of this Act,— Jurisdiction not transferred to High Court.

(1.) Any appellate jurisdiction of the Court of Appeal in Chancery, or of the same Court sitting as a Court of Appeal in Bankruptcy;
(2.) Any jurisdiction of the Court of Appeal in Chancery of the County Palatine of Lancaster;
(3.) Any jurisdiction usually vested in the Lord Chancellor or in the Lords Justices of Appeal in Chancery, or either of them, in relation to the custody of the persons and estates of idiots, lunatics, and persons of unsound mind;
(4.) Any jurisdiction vested in the Lord Chancellor in relation to grants of Letters Patent, or the issue of commissions or other writings, to be passed under the Great Seal of the United Kingdom;
(5.) Any jurisdiction exercised by the Lord Chancellor in right of or on behalf of Her

Majesty as visitor of any College, or of any charitable or other foundation;

(6.) Any jurisdiction of the Master of the Rolls in relation to records in London or elsewhere in England.

Jurisdiction transferred to Court of Appeal.

18. The Court of Appeal established by this Act shall be a Superior Court of Record, and there shall be transferred to and vested in such Court all jurisdiction and powers of the Court following: (that is to say,)

(1.) All jurisdiction and powers of the Lord Chancellor, and of the Court of Appeal in Chancery in the exercise of his and its appellate jurisdiction, and of the same Court as a Court of Appeal in Bankruptcy;

(2.) All jurisdiction and powers of the Court of Appeal in Chancery of the county palatine of Lancaster, and all jurisdiction and powers of the Chancellor of the duchy and county palatine of Lancaster when sitting alone or apart from the Lords Justices of Appeal in Chancery as a Judge of re-hearing or appeal from decrees or orders of the Court of Chancery of the county palatine of Lancaster;

(3.) All jurisdiction and powers of the Court of the Lord Warden of the Stannaries assisted by his assessors, including all jurisdiction and powers of the said Lord Warden when sitting in his capacity of Judge;

(4.) All jurisdiction and powers of the Court of Exchequer Chamber;

(5.) All jurisdiction vested in or capable of being exercised by Her Majesty in Council, or the Judicial Committee of Her Majesty's Privy Council, upon appeal from any judgment or order of the High Court of Admiralty, or from any order in lunacy made by the Lord Chancellor, or any other person having jurisdiction in lunacy.

As to Jurisdiction of the Chancery Court of the County Palatine of Lancaster, see Re Alison's Trusts, 8 Ch. D. 1. Re Longdendale Cotton Co., 8 Ch. D. 150. *Lee* v. *Nuttall*, 48 L. J. ch. 616.

Appeals from High Court.

19. The said Court of Appeal shall have jurisdiction and power to hear and determine Appeals

from any judgment or order, save as hereinafter mentioned of Her Majesty's High Court of Justice, or of any Judges or Judge thereof, subject to the provisions of this Act, and to such Rules and Orders of Court for regulating the terms and conditions on which such Appeals shall be allowed, as may be made pursuant to this Act.

For all the purposes of and incidental to the hearing and determination of any Appeal within its jurisdiction, and the amendment, execution, and enforcement of any judgment or order made on any such Appeal, and for the purpose of every other authority expressly given to the Court of Appeal by this Act, the said Court of Appeal shall have all the power, authority, and jurisdiction by this Act vested in the High Court of Justice.

An Appeal will lie under this section from a decision upon a special case stated by an umpire under the Lands Clauses Act, 1845. *Bidder* v. *N. Stafford Ry. Co.*, 4 Q. B. D. 412.

20. See now sec. 3 of the App. Jur. Act, 1876. Repealed by s. 24 App. Juris. Act 1876.

21. See now sec. 14 of the App. Jur. Act, 1876. Repealed by s. 24 App. Juris. Act. 1876.

22. From and after the commencement of this Act the several jurisdictions which by this Act are transferred to and vested in the said High Court of Justice and the said Court of Appeal respectively shall cease to be exercised, except by the said High Court of Justice and the said Court of Appeal respectively, as provided by this Act; and no further or other appointment of any Judge to any Court whose jurisdiction is so transferred shall be made except as provided by this Act: Provided, that in all causes, matters, and proceedings whatsoever which shall have been fully heard, and in which judgment shall not have been given, or having been given shall not have been signed, drawn up, passed, entered, or otherwise perfected at the time appointed for the commencement of this Act, such judgment, decree, rule, or order may be given or made, signed, drawn up, passed, entered, or perfected respectively, after the commencement of this Act, in the name of the same Court, and by the same judges and officers, and generally in the same manner, in all respects as if this Act had not passed; and the same shall take effect, to all intents and purposes, as if the same had been duly perfected before the commencement of this

Transfer of pending business.

Act; and every judgment, decree, rule, or order of any Court whose jurisdiction is hereby transferred to the said High Court of Justice or the said Court of Appeal, which shall have been duly perfected at any time before the commencement of this Act, may be executed and enforced, and, if necessary, amended or discharged by the said High Court of Justice and the said Court of Appeal respectively, in the same manner as if it had been a judgment, decree, rule, or order of the said High Court or of the said Court of Appeal; and all causes, matters, and proceedings whatsoever, whether Civil or Criminal, which shall be pending in any of the Courts whose jurisdiction is so transferred as aforesaid at the commencement of this Act, shall be continued and concluded, as follows (that is to say), in the case of proceedings in Error or on Appeal, or of proceedings before the Court of Appeal in Chancery, in and before Her Majesty's Court of Appeal; and, as to all other proceedings, in and before Her Majesty's High Court of Justice. The said Courts respectively shall have the same jurisdiction in relation to all such causes, matters, and proceedings as if the same had been commenced in the said High Court of Justice, and continued therein (or in the said Court of Appeal, as the case may be) down to the point at which the transfer takes place; and, so far as relates to the form and manner of procedure, such causes, matters, and proceedings, or any of them, may be continued and concluded, in and before the said Courts respectively, either in the same or the like manner as they would have been continued and concluded in the respective Courts from which they shall have been transferred as aforesaid, or according to the ordinary course of the said High Court of Justice and the said Court of Appeal respectively (so far as the same may be applicable thereto), as the said Courts respectively may think fit to direct.

Rules as to exercise of jurisdiction.

23. The jurisdiction by this Act transferred to the said High Court of Justice and the said Court of Appeal respectively shall be exercised (so far as regards procedure and practice) in the manner provided by this Act, or by such Rules and Orders of Court as may be made pursuant to this Act; and where no special provision is contained in this Act or in any such Rules or Orders of Court with reference

thereto, it shall be exercised as nearly as may be in the same manner as the same might have been exercised by the respective Courts from which such jurisdiction shall have been transferred, or by any of such Courts.

Law and equity to be concurrently administered.

24. In every civil cause or matter commenced in the High Court of Justice, law and equity shall be administered by the High Court of Justice and the Court of Appeal respectively according to the Rules following:

(1.) If any plaintiff or petitioner claims to be entitled to any equitable estate or right, or to relief upon any equitable ground against any deed, instrument, or contract, or against any right, title, or claim whatsoever asserted by any defendant or respondent in such cause or matter, or to any relief founded upon a legal right, which heretofore could only have been given by a Court of Equity, the said Courts respectively, and every Judge thereof, shall give to such plaintiff or petitioner such and the same relief as ought to have been given by the Court of Chancery in a suit or proceeding for the same for the like purpose properly instituted before the passing of this Act.

(2.) If any defendant claims to be entitled to any equitable estate or right, or to relief upon any equitable ground against any deed, instrument, or contract, or against any right, title, or claim asserted by any plaintiff or petitioner in such cause or matter, or alleges any ground of equitable defence to any claim of the plaintiff or petitioner in such cause or matter, the said Courts respectively, and every Judge thereof, shall give to every equitable estate, right, or ground of relief so claimed, and to every equitable defence so alleged, such and the same effect, by way of defence against the claim of such plaintiff or petitioner, as the Court of Chancery ought to have given if the same or the like matters had been relied on by way of defence in any suit or proceeding instituted in that Court for the same or the like purpose before the passing of this Act.

(3.) The said Courts respectively, and every Judge thereof, shall also have power to grant to any defendant in respect of any equitable estate or right, or other matter of equity, and also in respect of any legal estate, right, or title claimed or asserted by him, all such relief against any plaintiff or petitioner as such defendant shall have properly claimed by his pleading, and as the said Courts respectively, or any Judge thereof, might have granted in any suit instituted for that purpose by the same defendant against the same plaintiff or petitioner; and also all such relief relating to or connected with the original subject of the cause or matter, and in like manner claimed against any other person, whether already a party to the same cause or matter or not, who shall have been duly served with notice in writing of such claim pursuant to any Rule of Court or any Order of the Court, as might properly have been granted against such person if he had been made a defendant to a cause duly instituted by the same defendant for the like purpose; and every person served with any such notice shall thenceforth be deemed a party to such cause or matter, with the same rights in respect of his defence against such claim, as if he had been duly sued in the ordinary way by such defendant.

(4.) The said Courts respectively, and every Judge thereof, shall recognise and take notice of all equitable estates, titles, and rights, and all equitable duties and liabilities appearing incidentally in the course of any cause or matter, in the same manner in which the Court of Chancery would have recognised and taken notice of the same in any suit or proceeding duly instituted therein before the passing of this Act.

(5.) No cause or proceeding at any time pending in the High Court of Justice, or before the Court of Appeal, shall be restrained by prohibition or injunction; but every matter of equity on which an injunction against the prosecution of any such cause or proceeding might have been obtained, if this Act had

not passed, either unconditionally or on any terms or conditions, may be relied on by way of defence thereto: Provided always, that nothing in this Act contained shall disable either of the said Courts from directing a stay of proceedings in any cause or matter pending before it if it shall think fit; and any person, whether a party or not to any such cause or matter, who would have been entitled, if this Act had not passed, to apply to any Court to restrain the prosecution thereof, or who may be entitled to enforce, by attachment or otherwise, any Judgment, Decree, Rule, or Order, contrary to which all or any part of the proceedings in such cause or matter may have been taken, shall be at liberty to apply to the said Courts respectively, by motion in a summary way, for a stay of proceedings in such cause or matter, either generally, or so far as may be necessary for the purposes of justice; and the Court shall thereupon make such Order as shall be just.

(6.) Subject to the aforesaid provisions for giving effect to equitable rights and other matters of equity in manner aforesaid, and to the other express provisions of this Act, the said Courts respectively, and every Judge thereof, shall recognise and give effect to all legal claims and demands, and all estates, titles, rights, duties, obligations, and liabilities existing by the Common Law or by any custom, or created by any Statute, in the same manner as the same would have been recognised and given effect to if this Act had not passed by any of the Courts whose jurisdiction is hereby transferred to the said High Court of Justice.

(7.) The High Court of Justice and the Court of Appeal respectively, in the exercise of the jurisdiction vested in them by this Act in every cause or matter pending before them respectively, shall have power to grant, and shall grant, either absolutely or on such reasonable terms and conditions as to them shall seem just, all such remedies whatsoever as any of the parties thereto may

appear to be entitled to in respect of any and every legal or equitable claim properly brought forward by them respectively in such cause or matter; so that, as far as possible, all matters so in controversy between the said parties respectively may be completely and finally determined, and all multiplicity of legal proceedings concerning any of such matters avoided.

The Court of Bankruptcy may still restrain an action in another Court. *Ex parte Ditton*, 1 Ch. D. 557. But one Division of the High Court cannot restrain any proceedings in another. *Wright* v. *Redgrave*, 11 Ch. D. 24.

Staying execution on an award in another Division would be similar in effect to interfering by injunction. *Powell* v. *Jewesbury*, 9 Ch. D. 34.

A defendant is entitled to have further proceedings in an action stayed where the plaintiff seeks to proceed, notwithstanding his agreement to compromise. *Eden* v. *Naish*, 7 Ch. D. 781.

In an administration suit the absence of a general representative of the estate must be rectified, as the administrator *ad litem* was insufficient for finally determining the cause or matter when the object of the suit was to establish the title of the plaintiff as sole next of kin. *Dowdeswell* v. *Dowdeswell*, 9 Ch. D. 294.

Rules of law upon certain points.

25. And whereas it is expedient to take occasion of the union of the several Courts whose jurisdiction is hereby transferred to the said High Court of Justice to amend and declare the Law to be hereafter administered in England, as to the matters next hereinafter mentioned: Be it enacted as follows:

(1.) Repealed by sec. 10 of the Act 1875, which is substituted for it.

Statutes of Limitation inapplicable to express trusts.

(2.) No claim of a cestui qui trust against his trustee for any property held on an express trust, or in respect of any breach of such trust, shall be held to be barred by any Statute of Limitations.

Equitable waste.

(3.) An estate for life without impeachment of waste shall not confer or be deemed to have conferred upon the tenant for life any legal right to commit waste of the description known as equitable waste, unless an intention to confer such right shall expressly appear by the instrument creating such estate.

Merger.

(4.) There shall not, after the commencement of this Act, be any merger by operation of law only of any estate, the beneficial interest in

which would not be deemed to be merged or extinguished in equity.

Suits for possession of land by mortgagors.

(5.) A mortgagor entitled for the time being to the possession or receipt of the rents and profits of any land as to which no notice of his intention to take possession or to enter into the receipt of the rents and profits thereof shall have been given by the mortgagee, may sue for such possession, or for the recovery of such rents or profits, or to prevent or recover damages in respect of any trespass or other wrong relative thereto, in his own name only, unless the cause of action arises upon a lease or other contract made by him jointly with any other person.

Assignment of debts and choses in action.

(6.) Any absolute assignment, by writing under the hand of the assignor (not purporting to be by way of charge only), of any debt or other legal chose in action, of which express notice in writing shall have been given to the debtor, trustee, or other person from whom the assignor would have been entitled to receive or claim such debt or chose in action, shall be, and be deemed to have been effectual in law (subject to all equities which would have been entitled to priority over the right of the assignee if this Act had not passed,) to pass and transfer the legal right to such debt or chose in action from the date of such notice, and all legal and other remedies for the same, and the power to give a good discharge for the same, without the concurrence of the assignor: Provided always, that if the debtor, trustee, or other person liable in respect of such debt or chose in action shall have had notice that such assignment is disputed by the assignor or any one claiming under him, or of any other opposing or conflicting claims to such debt or chose in action, he shall be entitled, if he think fit, to call upon the several persons making claim thereto to interplead concerning the same, or he may, if he think fit, pay the same into the High Court of Justice under and in conformity with the provisions of the Acts for the relief of trustees.

It would appear that proceedings may be taken under the latter portion of this sub-section without waiting till action brought. (*Re New Hamburgh Ry. Co.*, W. N. 1875, 239.)

Stipulations not of the essence of contracts.

(7.) Stipulations in contracts, as to time or otherwise, which would not before the passing of this Act have been deemed to be or to have become of the essence of such contracts in a Court of Equity, shall receive in all Courts the same construction and effect as they would have heretofore received in equity.

Injunctions and receivers.

(8.) A mandamus or an injunction may be granted or a receiver appointed by an interlocutory Order of the Court in all cases in which it shall appear to the Court to be just or convenient that such Order should be made; and any such Order may be made either unconditionally or upon such terms and conditions as the Court shall think just; and if an injunction is asked, either before, or at, or after the hearing of any cause or matter, to prevent any threatened or apprehended waste or trespass, such injunction may be granted, if the Court shall think fit, whether the person against whom such injunction is sought is or is not in possession under any claim of title or otherwise, or (if out of possession) does or does not claim a right to do the act sought to be restrained under any colour of title; and whether the estates claimed by both or by either of the parties are legal or equitable.

Damages by collisions at sea.

(9.) In any cause or proceeding for damages arising out of a collision between two ships, if both ships shall be found to have been in fault, the rules hitherto in force in the Court of Admiralty, so far as they have been at variance with the rules in force in the Courts of Commou Law shall prevail.

Infants.

(10. In questions relating to the custody and education of infants the Rules of Equity shall prevail.

Cases of conflict not enumerated.

(11.) Generally in all matters not hereinbefore particularly mentioned, in which there is any conflict or variance between the Rules of Equity and the Rules of the Common Law with reference to the same matter, the rules of Equity shall prevail.

This section treats of matters too extensive to be adequately discussed within the scope of this work. The following brief

remarks and cases decided for the most part since the passing of the Act may be found useful to the practitioner.

Mortgagor. A mortgagor in receipt of the rents and profits may maintain an action on a covenant to restrain a defendant from using a building as a beer-house without joining the mortgagee. *Fairclough* v. *Marshall*, 4 Ex. D. 37.

Assignee of chose in Action. As to the assignee of a chose in action joining the assignor as co-plaintiff, see *Turquand* v. *Fearon*, 4 Q. B. D. 280. Order XVI. 2, *post*.

Mandamus.

The duty of which it is sought to compel the performance must be one of a public nature, and under the section of the C. L. P. Act, 1854, must have been one in fulfilment of which the plaintiff was personally interested. (*Benson* v. *Paul*, 6 E. & B. 273.)

Discretionary. A writ of mandamus is a prerogative writ, and not a writ of right, and it is in this sense in the discretion of the Court whether it shall be granted or not; but where the judges grant a peremptory mandamus, such a decision is subject to review. (*Reg.* v. *Churchwardens of All Saints*, 1 App. Cas. 611.) The Court will not issue a mandamus against a public body when the performance of the duty sought to be enforced is impossible by reason of the want of funds. (*Re Bristol & Somerset Ry.*, 3 Q. B. D. 10.)

Companies. A mandamus will lie against a chartered Company to compel the Company to place a plaintiff on the register. (*Norris* v. *Irish Land Co.*, 8 E. & B. 512.) A summary remedy is given by Sec. 35 of the Companies Act, 1862, (25 & 26 Vict. c. 89,) to a person who is aggrieved by his name being without sufficient cause inserted in or omitted from the register and the Companies Act, 1867, 30 & 31 Vict. c. 131, 26, gives power to the transferor of shares to make an application to have the name of the transferee placed on the register. (See *Ward* v. *Henry's* case, L. R. 2 Ch. 431.)

Statute of Limitations. A mandamus will be granted to levy a rate to pay a debt, and the Statute of Limitations does not bar an application for such a writ. (*Ward* v. *Lowndes*, 1 E. & E. 940.)

Meaning of, in this section. The mandamus spoken of in this section is not the prerogative mandamus, but only a mandamus which must be granted to direct the performance of some act, of something to be done which is the result of an action where an action will lie." (Per *Brett L. J. Glossop* v. *Heston Local Board*, 12 Ch. D. 122; and see *Re Paris Rink Co.*, 6 Ch. D. 731.)

See further, "Tapping on Mandamus."

Injunction.

This section has considerably enlarged the powers of the Court by fusing the extensive powers given by the C. L. P. Act, 1854, secs. 79, 81, 82, with the jurisdiction formerly exercised by a Court of Equity; the principles remain the same, and it is with regard to those settled legal reasons or principles that the Court will decide what terms and conditions are just. (*Beddow* v. *Beddow*, 9 Ch. D. 89; *Shaw* v. *E. of Jersey*, 4 C. P. D. 359; *Gaskin* v. *Balls*, 13 Ch. D. 324.) It must be "just as well as convenient." (*Day* v. *Brownrigg*, 10 Ch. D. 294.)

Jurisdiction. A foreign sovereign who submits to be made a defendant in an action, for the purpose of empowering the Court to make an order, does not thereby part with any of his rights. (*Vavasseur* v. *Krupp*,

9 Ch. D. 351.) In the absence of any equity to justify them, the Courts in this country will not restrain by injunction a plaintiff from proceeding in a foreign Court. (*Fletcher* v. *Rodgers*, 27, W. R. 97.)

Telegram. A notice granting an injunction may be given by telegram. A sheriff's officer who receives such a notice should inquire by telegraph to see if it be *bona fide; Ex parte Langley*, 13 Ch. D. 110, in which case it was held that a London solicitor who obtains an order restraining a sale in the country ought to telegraph to his agent at the place and ask him to give notice to the persons affected; and see also *Re Bryant*, 4 Ch. D. 98.

Club. The Court will restrain the committee of a club from acting improperly in a matter of expelling a member. (*Fisher* v. *Keane*, 11 Ch. D. 353; *Labouchere* v. *Earl of Wharncliffe*, 13 Ch. D. 346.) An injunction will be granted to restrain the publication of

Trade libel. matter injurious to the plaintiff's trade, and which a jury have found to be libellous. (*Saxby* v. *Easterbrook*, 3 C. P. D. 339.)

How granted. Such an application should not be made by an interlocutory motion. (*Thorley's Food Co.* v. *Massam*, 6 Ch. D. 582.)

An injunction will be granted to restrain the exportation of goods under a trade-mark likely to deceive a foreign though not a home purchaser. (*Orr Ewing* v. *Johnston*, 13 Ch. D. 434.) Where a plaintiff has established his right to a perpetual injunction, the Court has no power to oblige him to accept damages in lieu of an injunction. (*Krehl* v. *Burrell*, 11 Ch. D. 146.)

In *Ex parte McPhail*, 48 L. J. Ch. 415, Jessel M.R. refused leave to serve a writ out of the jurisdiction on the ground that the plaintiff could have as effectual a remedy by application to the local Court. In an action for nuisance the County Court can grant an injunction where the damages are within the limit of its jurisdiction. (*Reg.* v. *Harrington*, 48 L. J. 300.) As to providing for an injunction where the writ is to be served out of the jurisdiction, see *Young* v. *Brassey*, 1 Ch. D. 277.

Costs on higher scale. As to when a plaintiff will be allowed costs on a higher scale, see *Chapman* v. *Midland Ry. Co.*, 5 Q. B. D. 167, & R. S. C. (Costs), Order VI. 2, *post*.

See further, "Kerr on Injunctions."

Receivers.

When appointed. Where there is immediate danger of the corpus of the property being destroyed, a receiver may be appointed at any stage of the action even before the service of the writ. (*Re H.'s Estate*, 1 Ch. D. 276.) And he may be appointed *ex parte* without giving the usual security, on an understanding to deal with the property only under the direction of the Court, and to abide by any order the Court may make. (*Taylor* v. *Eckersley*, 2 Ch. D. 302.) If a receiver is appointed upon the terms of giving security, he is not properly constituted a receiver until that has been done. (*Edwards* v. *Edwards*, 2 Ch. D. 291.) Persons who are deeply interested in the proper management of a concern will not be required to give security. (*Boyle* v. *Bettws Coal Co.*, 2 Ch. D. 726. *Hyde* v. *Warden*, 1 Ex. D. 309.)

A defendant may apply for an injunction and a receiver (*Sargent* v. *Read*, 1 Ch. D. 600), in which case both plaintiff and defendant applied, and the plaintiff was appointed personally, on the ground that he was the most suitable person, as the business required almost professional skill.

A claim for injunction or receiver should be endorsed upon the writ, when either is a substantial part of the action. (*Colebourne* v. *Colebourne*, 1 Ch. D. 690.) Indorsement on writ.

The effect of appointing a receiver is to remove the goods out of the operation of the "order and disposition" clause of the Bankruptcy Act, 1869. (*Taylor* v. *Eckersley*, 5 Ch. D. 740.)

The cases in which the appointment of a receiver may be authorised under this section would seem to be more extensive than under the old practice (*Pease* v. *Fletcher*, 1 Ch. D. 273), where a mortgagee, whose title was partly legal and partly equitable, was granted a receiver of the whole estate: and see some remarks of Cotton, L. J., in *Anglo-Italian Bank* v. *Davies*, 9 Ch. D. 275, where the powers given by the Judicature Acts were amply discussed, and a receiver was appointed of the equity of redemption vested in a judgment debtor. Mortgagee legal and equitable title.

As to appointing a receiver, where a widow who had property vested in trustees and neglected to pay costs, see *Bryant* v. *Bull*, 10 Ch. D. 153.

Where the receiver disobeys the order of the Court, it is not necessary to obtain leave before issuing a writ of sequestration against him. (*Sprunt* v. *Pugh*, 7 Ch. D. 567.) Disobedience.

The appointment of a receiver is in the discretion of the Court, and the Court of Appeal will not, as a rule, interfere with that discretion. (*Nothard* v. *Proctor*, 1 Ch. D. 4.) See further, as to receivers, "Seton on Decrees," 4th ed., chap. xvi., p. 410. Discretionary.

The law as to the custody of infants has lately been the subject of very ample discussion in two cases recently decided. (*Re Agar-Ellis*, 10 Ch. D. 49, and *Re Besant*, 11 Ch. D. 508.) Infants.

Part III.

Sittings and Distribution of Business.

26. The Division of the legal year into terms shall be abolished so far as relates to the administration of justice; and there shall no longer be terms applicable to any sitting or business of the High Court of Justice, or of the Court of Appeal, or of any Commissioners to whom any jurisdiction may be assigned under this Act; but in all other cases in which, under the law now existing, the terms into which the legal year is divided are used as a measure for determining the time at or within which any act is required to be done, the same may continue to be referred to for the same or the like purpose, unless and until provision is otherwise made by any lawful authority. Subject to Rules of Court, the High Court of Justice and the Court of Appeal, and the Judges thereof respectively, or any such Commissioners as aforesaid, shall have power to sit and act, at any time, and at any place, for the transaction of any part of the business of such Courts respectively, or of such Judges or Commissioners, or for the discharge of any duty which, by any Act of Abolition of terms.

Parliament, or otherwise, is required to be discharged during or after term.

Terms survive for the purpose of moving to set aside an award. (*Christ's Hospital* v. *Martin*, 3 Q. B. D. 28.) Terms were regulated by 11 Geo. 4, and 1 Will. 4, c. 70, sec. 6.

Vacations.

27. Her Majesty in Council may from time to time, upon any report or recommendation of the Judges by whose advice Her Majesty is hereinafter authorised to make rules before the commencement of this Act and after the commencement of this Act upon any report or recommendation of the Council of Judges of the Supreme Court hereinafter mentioned with the consent of the Lord Chancellor, make, revoke, or modify, orders regulating the vacations to be observed by the High Court of Justice and the High Court of Appeal, and in the offices of the said Courts respectively; and any Order in Council made pursuant to this section, shall, so long as it continues in force, be of the same effect as if it were contained in this Act; and Rules of Court may be made for carrying the same into effect in the same manner as if such Order in Council were part of this Act. In the meantime, and subject thereto, the said vacations shall be fixed in the same manner, and by the same authority as if this Act had not passed. This section shall come into operation immediately upon the passing of this Act.

Sittings in vacation.

28. Provision shall be made by Rules of Court for the hearing, in London or Middlesex, during vacation by Judges of the High Court of Justice and the Court of Appeal respectively, of all such applications as may require to be immediately or promptly heard.

Jurisdiction of Judges of High Court on circuit.

29. Her Majesty, by Commission of assize or by any other commission, either general or special, may assign to any Judge or Judges of the High Court of Justice or other persons usually named in commissions of assize, the duty of trying and determining within any place or district specially fixed for that purpose by such commission, any causes or matters, or any questions or issues of fact or of law, or partly of fact and partly of law, in any cause or matter depending in the said High Court, or the exercise of any civil or criminal jurisdiction capable of being exercised by the said High Court; and any commission so granted by Her Majesty shall be of the same validity as if it were

enacted in the body of this Act; and any Commissioner or Commissioners appointed in pursuance of this section shall, when engaged in the exercise of any jurisdiction assigned to him or them in pursuance of this Act, be deemed to constitute a Court of the said High Court of Justice; and subject to any restrictions or conditions imposed by Rules of Court and to the power of transfer, any party to any cause or matter involving the trial of a question or issue of fact, or partly of fact and partly of law, may, with the leave of the Judge or Judges to whom or to whose division the cause or matter is assigned, require the question or issue to be tried and determined by a Commissioner or Commissioners as aforesaid, or at sittings to be held in Middlesex or London as hereinafter in this Act mentioned, and such question or issue shall be tried and determined accordingly.

A cause or matter not involving any question or issue of fact may be tried and determined in like manner with the consent of all the parties thereto.

Sittings for trial by jury in London and Middlesex.

30. Subject to Rules of Court, sittings for the trial by jury of causes and questions or issues of fact shall be held in Middlesex and London, and such sittings shall, so far as is reasonably practicable, and subject to vacations, be held continuously throughout the year by as many Judges as the business to be disposed of may render necessary. Any Judge of the High Court of Justice sitting for the trial of causes and issues in Middlesex or London, at any place heretofore accustomed, or to be hereafter determined by Rules of Court, shall be deemed to constitute a Court of the said High Court of Justice.

Divisions of the High Court of Justice.

31. For the more convenient despatch of business in the said High Court of Justice (but not so as to prevent any Judge from sitting whenever required in any Divisional Court, or for any Judge of a different Division from his own,) there shall be in the said High Court five Divisions consisting of such number of Judges respectively as hereinafter mentioned. Such five Divisions shall respectively include, immediately on the commencement of this Act, the several Judges following; (that is to say,)

(1.) One Division shall consist of the following Judges; (that is to say,) The Lord Chancellor, who shall be President thereof, the

Master of the Rolls, and the Vice-Chancellors of the Court of Chancery, or such of of them as shall not be appointed ordinary Judges of the Court of Appeal;

(2.) One other Division shall consist of the following Judges: (that is to say,) The Lord Chief Justice of England, who shall be President thereof, and such of the other Judges of the Court of Queen's Bench, as shall not be appointed ordinary Judges of the Court of Appeal;

(3.) One other Division shall consist of the following Judges: (that is to say,) The Lord Chief Justice of the Common Pleas, who shall be President thereof, and such of the other Judges of the Court of Common Pleas as shall not be appointed ordinary Judges of the Court of Appeal;

(4.) One other Division shall consist of the following Judges: (that is to say,) The Lord Chief Baron of the Exchequer, who shall be President thereof, and such of the other Barons of the Court of Exchequer as shall not be appointed ordinary Judges of the Court of Appeal;

(5.) One other Division shall consist of two Judges who, immediately on the commencement of this Act, shall be the existing Judge of the Court of Probate and of the Court for Divorce and Matrimonial Causes and the existing Judge of the High Court of Admiralty, unless either of them is appointed an ordinary Judge to the Court of Appeal. The existing Judge of the Court of Probate shall (unless so appointed) be the President of the said Division, and subject thereto the Senior Judge of the said Division, according to the order of Precedence under this Act, shall be President.

The said five Divisions shall be called respectively the Chancery Division, the Queen's Bench Division, the Common Pleas Division, the Exchequer Division, and the Probate, Divorce, and Admiralty Division.

Any deficiency of the number of five Judges for constituting, in manner aforesaid, immediately on the commencement of this Act, any one or more of the Queen's Bench, Common Pleas, and Exchequer

Divisions, may be supplied by the appointment, under Her Majesty's Royal Sign Manual, either before or after the time fixed for the commencement of this Act, of one of the Puisne Justices or Junior Barons of any superior Court of Common Law from which no Judge may be so appointed as aforesaid to the Court of Appeal, to be a Judge of any Division in which such deficiency would otherwise exist. And any deficiency of the number of three Vice-Chancellors or of the two Judges of the Probate and Admiralty Divisions at the time of the commencement of this Act may be supplied by the appointment of a new Judge in his place in the same manner as if a vacancy in such office had occurred after the commencement of this Act.

Any Judge of any of the said Divisions may be transferred by Her Majesty, under Her Royal Sign Manual, from one to another of the said Divisions.

Upon any vacancy happening among the Judges of the said High Court, the Judge appointed to fill such vacancy shall, subject to the provisions of this Act, and to any Rules of the Court which may be made pursuant thereto, become a member of the same Division to which the Judge whose place has become vacant belonged.

Power to alter Divisions by Order in Council.

32. Her Majesty in Council may from time to time, upon any report or recommendation of the Council of Judges of the Supreme Court hereinafter mentioned, order that any reduction or increase in the number of the Divisions of the High Court of Justice, or in the number of the Judges of the said High Court who may be attached to any such Division, may, pursuant to such report or recommendation, be carried into effect; and may give all such further directions as may be necessary or proper for that purpose; and such Order may provide for the abolition on vacancy of the distinction of the offices of any of the following Judges, namely the Chief Justice of England, the Master of the Rolls, the Chief Justice of the Common Pleas, and the Chief Baron of the Exchequer, which may be reduced, and of the salaries, pensions, and patronage attached to such offices, from the offices of the other Judges of the High Court of Justice, notwithstanding anything in this Act relating to the continuance of such offices, salaries, pensions, and patronage; but no such order of Her Majesty in

Council shall come into operation until the same shall have been laid before each House of Parliament for thirty days on which that House shall have sat, nor if, within such period of thirty days, an address is presented to Her Majesty by either House of Parliament, praying that the same may not come into operation. Any such Order, in respect whereof no such address shall have been presented to Her Majesty, shall, from and after the expiration of such period of thirty days, be of the same force and effect as if it had been herein expressly enacted: Provided always, that the total number of the Judges of the Supreme Court shall not be reduced or increased by any such Order.

Rules of Court to provide for distribution of business.

33. All causes and matters which may be commenced in, or which shall be transferred by this Act to, the High Court of Justice, shall be distributed among the several Divisions and Judges of the said High Court, in such manner as may from time to time be determined by any Rules of Court, or orders of Transfer, to be made under the authority of this Act; and in the meantime, and subject thereto, all such causes and matters shall be assigned to the said Divisions respectively, in the manner hereinafter provided. Every document by which any cause or matter may be commenced in the said High Court shall be marked with the name of the Division, or with the name of the Judge, to which or to whom the same is assigned.

Assignment of certain business to particular Divisions of High Court, subject to Rules.

34. There shall be assigned (subject as aforesaid) to the Chancery Division of the said Court:

(1.) All causes and matters pending in the Court of Chancery at the commencement of this Act;

(2.) All causes and matters to be commenced after the commencement of this Act, under any Act of Parliament by which exclusive jurisdiction in respect to such causes or matters, has been given to the Court of Chancery, or to any Judges or Judge thereof respectively, except Appeals from County Courts;

(3.) All causes and matters for any of the following purposes:

The administration of the estates of deceased persons;

The dissolution of partnerships or the taking of partnership or other accounts;

The redemption of foreclosure of mortgages;
The raising of portions, or other charges on land;
The sale and distribution of the proceeds of property subject to any lien or charge;
The execution of trusts, charitable or private;
The rectification, or setting aside, or cancellation of deeds or other written instruments;
The specific performance of contracts between vendors and purchasers of real estates, including contracts for leases;
The partition or sale of real estates;
The wardship of infants and the care of infants' estates.

There shall be assigned (subject as aforesaid) to the Queen's Bench Division of the said Court:

(1.) All causes and matters, civil and criminal, pending in the Court of Queen's Bench at the commencement of this Act;

(2.) All causes and matters, civil and criminal, which would have been within the exclusive cognizance of the Court of Queen's Bench in the exercise of its original jurisdiction if this Act had not passed.

There shall be assigned (subject as aforesaid) to the Common Pleas Division of the said Court:

(1.) All causes and matters pending in the Court of Common Pleas at Westminster, the Court of Common Pleas at Lancaster, and the Court of Pleas at Durham, respectively, at the commencement of this Act;

(2.) All causes and matters which would have been within the exclusive cognizance of the Court of Common Pleas at Westminster, if this Act had not passed.

There shall be assigned (subject as aforesaid) to the Exchequer Division of the said Court:

(1.) All causes and matters pending in the Court of Exchequer at the commencement of this Act;

(2). All causes and matters which would have been within the exclusive cognizance of the Court of Exchequer, either as a Court of Revenue or as a Common Law Court, if this Act had not passed;

Repealed by sec. 9, Act of 1875.

(3.) *All matters pending in the London Court of Bankruptcy at the commencement of this Act;*

Repealed by sec. 9, Act of 1875.

(4.) *All matters to be commenced after the commencement of this Act under any Act of Parliament by which exclusive jurisdiction in respect to such matters has been given to the London Court of Bankruptcy.*

There shall be assigned (subject as aforesaid) to the Probate, Divorce, and Admiralty Division of the said High Court:

(1.) All causes and matters pending in the Court of Probate, or in the Court for Divorce and Matrimonial Causes, or in the High Court of Admiralty, at the commencement of this Act;

(2.) All causes and matters which would have been within the exclusive cognizance of the Court of Probate, or the Court for Divorce and Matrimonial Causes, or of the High Court of Admiralty if this Act had not passed.

Chancery Division.

A comprehensive table of Statutes affecting the jurisdiction of the Court of Chancery may be found in Morgan's "Chancery Acts and Orders," and Barry's "Stat. Jur. of the Court of Chancery."

Allegations in a counterclaim raising matter peculiarly within the Jurisdiction of the Chancery Division do not constitute sufficient grounds for the transfer of the action to that Division. (*Storey* v. *Waddle*, 4 Q. B. D. 289.)

The Common Law Divisions, although they have no power to reform a deed, will treat it as reformed for the purposes of the action. (*Mostyn* v. *The West Mostyn Coal Co.*, 1 C. P. D. 145).

Queen's Bench Division.

The Court of Queen's Bench has exclusive jurisdiction in proceedings upon prerogative writs of mandamus and *quo warranto;* it also reviewed the judgments of Inferior Courts of Record by writ of error or writ of certiorari, and was the principal Court of criminal jurisdiction.

An appeal lies in all matters assigned to the Q. B. Div. exclusively, except such as come within the meaning of the last clause of sec. 47 of this Act. (*Reg.* v. *Collins*, 2 Q. B. D. 30; *Reg.* v. *Fletcher*, 2 Q. B. D. 43; and the *Overseers of Walsall* v. *L. N. W. Ry. Co.*, 4 App. Cas. 30). An application for Justices to state a case under 20 & 21 Vict. c. 43, is within the exclusive jurisdiction of the Q. B. D. (*Re Ellershaw*, 1 Q. B. D. 481.)

For an application to quash an inquisition before the Sheriff for compensation under the Lands Clauses Act, see *Reg.* v. *Sheward*, 5 Q. B. D. 179.

Common Pleas Division.

The Court of Common Pleas has exclusive jurisdiction in appeals from a revising barrister, municipal election petitions, in actions of dower and *quare impedit*, and to issue a commission for taking the acknowledgments of married women under the Fines and Recoveries Act, 3 & 4 Will. 4, c. 74, sec. 83.

Exchequer Division.

The Court of Exchequer has exclusive jurisdiction in all Revenue matters which concern the lands, franchises, &c., of the Queen, unless otherwise provided for by Statute.

The right of the Crown to remove causes affecting Crown property into the Exchequer remains unaffected. (*Att.-Gen.* v. *Constable*, 4 Ex. D. 172.)

35. Repealed by sec. 33 and the Schedule of the Act of 1875. Sec. 11 is substituted for it.

Power of transfer.

36. Any cause or matter may at any time, and at any stage thereof, and either with or without application from any of the parties thereto, be transferred by such authority and in such manner as Rules of Court may direct, from one Division or Judge of the High Court of Justice to any other Division or Judge thereof, or may by the like authority be retained in the Division in which the same was commenced, although such may not be the proper Division to which the same cause or matter ought, in the first instance, to have been assigned.

Sittings in London and Middlesex and on Circuits.

37. Subject to any arrangements which may be from time to time made by mutual agreement between the Judges of the said High Court, the sittings for trials by jury in London and Middlesex, and the sittings of Judges of the said High Court under Commissions of Assize, Oyer and Terminer, and Gaol Delivery, shall be held by or before Judges of the Queen's Bench, Common Pleas, or Exchequer Division of the said High Court; provided that it shall be lawful for Her Majesty, if she shall think fit, to include in any such Commission any Ordinary Judge of the Court of Appeal or any Judge of the Chancery Division to be appointed after the commencement of this Act, or any Serjeant-at-Law, or any of Her Majesty's Counsel learned in the law, who, for the purposes of such Commission, shall have all the power, authority, and jurisdiction of a Judge of the said High Court.

Rota of Judges for election petitions.

38. The Judges to be placed on the rota for the trial of election petitions for England in each year, under the provisions of the "Parliamentary Elections Act, 1868," shall be selected out of the Judges of the Queen's Bench, Common Pleas, and Exchequer Divisions of the High Court of Justice in such manner as may be provided by any rules of Court to be made for that purpose; and in the meantime, and subject thereto, shall be selected out of the Judges of the said Queen's Bench, Common Pleas and Exchequer Divisions of the said High Court, by the Judges of such Divisions respectively, as if such

Divisions had been named instead of the Courts of Queen's Bench, Common Pleas, and Exchequer respectively, in such last-mentioned Act: Provided that the Judges who, at the commencement of this Act, shall be upon the rota for the trial of such petitions during the then current year, shall continue upon such rota until the end of such year, in the same manner as if this Act had not passed.

Powers of one or more Judges not constituting a Divisional Court.

39. Any Judge of the said High Court of Justice may, subject to any Rules of Court, exercise in Court or in Chambers all or any part of the jurisdiction by this Act vested in the said High Court, in all such cause and matters, and in all such proceedings in any causes or matters, as before the passing of this Act might have been heard in Court or in Chambers respectively, by a single Judge of any of the Courts whose jurisdiction is hereby transferred to the said High Court, or as may be directed or authorised to be so heard by any Rules of Court to be hereafter made. In all such cases, any Judge sitting in Court shall be deemed to constitute a Court.

Divisional Courts of the High Court of Justice.

40. Such causes and matters as are not proper to be heard by a single Judge shall be heard by Divisional Courts of the said High Court of Justice, which shall for that purpose exercise all or any part of the jurisdiction of the said High Court. Any number of such Divisional Courts may sit at the same time. A Divisonal Court of the said High Court of Justice shall be constituted by two or three, and no more, of the Judges thereof; and, except when through pressure of business or any other cause it may not conveniently be found practicable, shall be composed of three such Judges. Every Judge of the said High Court shall be qualified and empowered to sit in any of such Divisional Courts. The President of every such Divisional Court of the High Court of Justice shall be the senior Judge of those present, according to the order of their precedence under this Act.

This section is controlled by the operation of the 17th sec. of the App. Jur. Act, 1876, *post*.

Divisional Courts for business of Queen's Bench, Common Pleas, and Exchequer Divisions.

41. Subject to any Rules of Court, and in the meantime until such Rules shall be made, all business belonging to the Queen's Bench, Common Pleas, and Exchequer Divisions respectively of the said High Court, which, according to the practice now existing in the Superior Courts of Common Law, would have

been proper to be transacted and disposed of by the Court sitting in Banc, if this Act had not passed, may be transacted and disposed of by Divisional Courts, which shall, as far as may be found practicable and convenient, include one or more Judge or Judges attached to the particular Division of the said Court to which the cause or matter out of which such business arises had been assigned; and it shall be the duty of every Judge of such last-mentioned Division, and also of every other Judge of the High Court who shall not for the time being be occupied in the transaction of any business specially assigned to him, or in the business of any other Divisional Court, to take part, if required, in the sittings of such Divisional Courts as may from time to time be necessary for the transaction of the business assigned to the said Queen's Bench, Common Pleas, and Exchequer Divisions respectively; and all such arrangements as may be necessary or proper for that purpose, or for constituting or holding any Divisional Courts of the said High Court of Justice for any other purpose authorised by this Act, and also for the proper transaction of that part of the business of the said Queen's Bench, Common Pleas, and Exchequer Divisions respectively which ought to be transacted by one or more Judges not sitting in a Divisional Court, shall be made from time to time under the direction and superintendence of the Judges of the said High Court, and in case of difference among them, in such manner as a majority of the said Judges, with the concurrence of the Lord Chief Justice of England shall determine.

This section is controlled by the operation of the 17th sec. of the App. Jur. Act, 1876, *post*.

Distribution of business among the Judges of the Chancery and Probate, Divorce, and Admiralty Divisions of the High Court.

42. Subject to any Rules of Court, and in the meantime until such Rules shall be made, all business arising out of any cause or matter assigned to the Chancery or Probate, Divorce, and Admiralty Division of the said High Court shall be transacted and disposed of in the first instance by one Judge only, as has been heretofore accustomed in the Court of Chancery, the Court of Probate and for Divorce and Matrimonial Causes, and the High Court of Admiralty respectively; and every cause or matter which, at the commencement of this Act, may be depending in the Court of Chancery, the Court of Probate and

for Divorce and Matrimonial Causes, and the High Court of Admiralty respectively, shall (subject to the power of transfer) be assigned to the same Judge in or to whose Court the same may have been depending or attached at the commencement of this Act; and every cause or matter which after the commencement of this Act may be commenced in the Chancery Division of the said High Court shall be assigned to one of the Judges thereof, by marking the same with the name of such of the said Judges as the plaintiff or petitioner (subject to the power of transfer) may in his option think fit: Provided that (subject to any Rules of Court, and to the power of transfer, and to the provisions of this Act as to trial of questions or issues by Commissioners, or in Middlesex or London,) all causes and matters which, if this Act had not passed, would have been within the exclusive cognisance of the High Court of Admiralty, shall be assigned to the present Judge of the said Admiralty Court during his continuance in office as a Judge of the High Court.

This section is controlled by the operation of the 17th sec. of the App. Jur. Act, 1876, *post.*

Divisional Courts for business of the Chancery Division.

43. Divisional Courts may be held for the transaction of any part of the business assigned to the said Chancery Division, which the Judge, to whom such business is assigned, with the concurrence of the President of the same Division, deems proper to be heard by a Divisional Court.

This section is controlled by the operation of the 17th sec. of the App. Jur. Act, 1876, *post.*

Divisional Courts for business belonging to the Division.

44. Divisional Courts may be held for the transaction of any part of the business assigned to the Probate, Divorce, and Admiralty Division of the said High Court, which the Judges of such Division, with the concurrence of the President of the said High Court, deem proper to be heard by a Divisional Court. Any cause or matter assigned to the said Probate, Divorce, and Admiralty Division may be heard at the request of the President of such Division, with the concurrence of the President of the said High Court by any other Judge of the said High Court.

This section is controlled by the operation of the 17th sec. of the App. Jur. Act, 1876, *post.*

Appeals from inferior Courts to be deter-

45. All Appeals from Petty or Quarter Sessions, from a County Court, or from any other inferior Court, which might before the passing of this Act

have been brought to any Court or Judge whose jurisdiction is by this Act transferred to the High Court of Justice, may be heard and determined by Divisional Courts of the said High Court of Justice, consisting respectively of such of the Judges thereof as may from time to time be assigned for that purpose, pursuant to Rules of Court, or (subject to Rules of Court) as may be so assigned according to arrangements made for the purpose by the Judges of the said High Court. The determination of such Appeals respectively by such Divisional Courts shall be final unless special leave to appeal from the same to the Court of Appeal shall be given by the Divisional Court by which any such appeal from an inferior Court shall have been heard.

mined by Divisional Courts.

Proceedings removed by certiorari must go to the Queen's Bench; and an appeal lies to the Court of Appeal without any leave upon a rule to show cause why writs of certiorari should not issue. (*Reg.* v. *Pemberton*, 5 Q. B. D. 95.)

The effect of this section was to remove the tribunals mentioned in it out of the category to which the 20th sec. App Jur. Act, 1876, applies. (*Crush* v. *Turner*, 3 Ex. D. 307.)

By section 6 of the County Court Act, 1875, the time for appealing is limited to eight days, and this time cannot be extended by leave of the Court or a Judge. (*Tennant* v. *Rawlings*, 4 C. P. D. 133.)

Time for appeal C. C. Act, 1875.

If a Divisional Court be not sitting, the application for a new trial may be made to a Judge at Chambers; but he has no jurisdiction otherwise. (*Brown* v. *Shaw*, 1 Ex. D. 425.)

There is no new trial from the decision of a County Court Judge on a matter of fact in an action remitted to the County Court. (*Cousins* v. *Lombard Bank*, 1 Ex. D. 404.)

Sec. 6 of the County Court Act, 1875, prescribes that the "Judge shall make a note of any question of law raised at the trial," at the request of either party, such request must be made during or immediately at the end of the trial. (*Pierpont* v. *Cartwright*, 5 C. P. D. 139.)

The Lord Mayor's Court is an Inferior Court; no appeal lies from a decision of a Divisional Court on a motion for a non-suit or verdict for the defendant in the Divisional Court unless special leave has been given. (*Appleford* v. *Judkins*, 3 C. P D. 489.) If the question, however, be one of law arising upon the record, the appeal goes direct to the Court of Appeal. (*Le Blanche* v. *Reuter*, 1 Ex. D. 408.)

Lord Mayor's Court.

46. Subject to any Rules of Court, any Judge of the said High Court, sitting in the exercise of its jurisdiction elsewhere than in a Divisional Court, may reserve any case, or any point in a case, for the consideration of a Divisional Court, or may direct any case, or point in a case, to be argued before a Divisional Court; and any Divisional Court of the said High Court shall have power to hear and

Cases and points may be reserved for or directed to be argued before Divisional Courts.

determine any such case or point so reserved or so directed to be argued.

This section is controlled by the operation of the 17th sec. App. Jur. Act, 1876, *post.*

Provision for Crown cases reserved.

47. The jurisdiction and authorities in relation to questions of law arising in criminal trials which are now vested in the Justices of either Bench and the Barons of the Exchequer by the Act of the session of the eleventh and twelfth years of the reign of Her present Majesty, chapter seventy-eight, intituled "An Act for the further amendment of the administration of the Criminal Law," or any Act amending the same shall and may be exercised after the commencement of this Act by the Judges of the High Court of Justice, or five of them at the least, of whom the Lord Chief Justice of England, the Lord Chief Justice of the Common Pleas, and the Lord Chief Baron of the Exchequer, or one of such chiefs at least, shall be part. The determination of any such question by the Judges of the said High Court in manner aforesaid shall be final and without appeal; and no appeal shall lie from any judgment of the said High Court in any criminal cause or matter, save for some error of law apparent upon the record, as to which no question shall have been reserved for the consideration of the said Judges under the said Act of the eleventh and twelfth years of Her Majesty's reign.

There is no appeal to the Court of Appeal except for error in the record in a criminal case; such as an information for libel under 6 & 7 Vict. c. 96, s. 8, (*Reg.* v. *Steel*, 2 Q. B. D. 37,) or a certiorari to bring up a summary conviction for the purpose of quashing it, (*Reg.* v. *Fletcher*, 2 Q. B. D. 43,) or a conviction under 16 & 17 Vict. c. 119, s. 3, for keeping a common gaming-house (*Blake* v. *Beech*, 2 Ex. D. 335).

48. Repealed by sec. 33 of the Act of 1875.

What orders shall not be subject to Appeal.

49. No order made by the High Court of Justice or any Judge thereof, by the consent of parties, or as to costs only, which by law are left to the discretion of the Court, shall be subject to any appeal, except by leave of the Court or Judge making such order.

An interpleader matter tried by consent by the Judge at Chambers is within this section. (*Edd* v. *Winsor*, W. N. 1878, 88.)

As to Costs, see Order LV.

As discharging orders made in Chambers.

50. Every order made by a Judge of the said High Court in Chambers, except orders made in the exercise of such discretion as aforesaid, may be set

aside or discharged upon notice by any Divisional Court, or by the Judge sitting in Court, according to the course and practice of the Division of the High Court, to which the particular cause or matter in which such order is made may be assigned; and no appeal shall lie from any such order, to set aside or discharge which no such motion has been made, unless by special leave of the Judge by whom such order was made, or of the Court of Appeal.

In the Chancery Division, as to the appeal from a Judge in Chambers to the Judge in Court, see *Dickson* v. *Harrison* and *Thomas* v. *Elsom*, Order LVIII. 15, *post*, *note*.

51. Upon the request of the Lord Chancellor, it shall be lawful for any Judge of the Court of Appeal, who may consent so to do, to sit and act as a Judge of the said High Court or to perform any other official or ministerial acts for or on behalf of any Judge absent from illness or any other cause, or in the place of any Judge whose office has become vacant, or as an additional Judge of any Division; and while so sitting and acting any such Judge of the Court of Appeal shall have all the power and authority of a Judge of the said High Court.

Provision for absence or vacancy in the office of a Judge.

An application of an urgent nature may be heard under this section when any Judge has risen for a few days' vacation. (*Chapman* v. *Real Property Co.*, 7 Ch. D. 732.)

52. In any cause or matter pending before the Court of Appeal, any direction incidental thereto, not involving the decision of the appeal, may be given by a single Judge of the Court of Appeal; and a single Judge of the Court of Appeal may at any time during vacation make any interim order to prevent prejudice to the claims of any parties pending an appeal as he may think fit; but every such order made by a single Judge may be discharged or varied by the Court of Appeal or a Divisional Court thereof.

Power of a single Judge in Court of Appeal

53. Repealed by sec. 33 and sch. of the Act of 1875. Sec. 12 is substituted for it.

54. Repealed by sec. 4 of the Act of 1875.

55. Repealed by sec. 24 of the App. Jur. Act, 1876. Sec. 14 of that Act is substituted for it.

Part IV.

Trial and Procedure.

References and assessors.

56. Subject to any Rules of Court and to such right as may now exist to have particular cases submitted to the verdict of a jury, any question arising in any cause or matter (other than a criminal proceeding by the Crown) before the High Court of Justice or before the Court of Appeal, may be referred by the Court or by any Divisional Court or Judge before whom such cause or matter may be pending, for inquiry and report to any official or special referee, and the report of any such referee may be adopted wholly or partially by the Court, and may (if so adopted) be enforced as a judgment by the Court. The High Court or the Court of Appeal may also, in any such cause or matter as aforesaid in which it may think it expedient so to do, call in the aid of one or more assessors specially qualified, and try and hear such cause or matter wholly or partially with the assistance of such assessors. The remuneration, if any, to be paid to such special referees or assessors shall be determined by the Court.

There is no power to compel a defendant to submit the case to a trial before a Judge and Assessors. (*Sugg* v. *Silber*, 1 Q. B. D. 362.)

On moving to set aside or vary the judgment on the report of a referee, an affidavit or some evidence of what took place at the trial must be produced. (*Stubbs* v. *Boyle*, 2 Q. B. D. 124.) An official referee has no power to order judgment to be entered (*Longman* v. *East*, 3 C. P. D. 142), where the powers of referees underwent a lengthened discussion, of which the following is a short summary. When the parties have consented, the Court may send, not the whole cause, but any question or issue of fact in the cause to the referee for trial. Where an order is made with consent, only such questions can be sent as in the judicial opinion of the Judge require a prolonged examination of documents, &c., that cannot conveniently be made before a jury. If there are no questions of law, it would seem that the referee might give the general effect of his finding in the form; that, having tried all the issues of fact, he found the result to be in favour of the plaintiff or defendant. In a case involving critical knowledge of pictures, the Court of Appeal refused to send the case for trial before a special referee, as the fortune and character of the defendant were involved, and he was entitled to have the matter tried in a public Court. (*Leigh* v. *Brooks*, 5 Ch. D. 592.) As a rule, that Court is disinclined to interfere with the discretion. (*Saxby* v. *Gloste Waggon Co.*, W. N. 1880, 28.)

Powers of official referee.

As to moving for judgment in an action in the Chancery Div. sent for trial at Westminster, and referred to the official referee, see *Munro* v. *Rendall*, W. N. 1878, 41.

Power to direct trials before referees.

57. In any cause or matter (other than a criminal proceeding by the Crown) before the said High Court in which all parties interested who are under no disability consent thereto, and also without such consent in any such cause or matter requiring any prolonged examination of documents or accounts, or any scientific or local investigation which cannot, in the opinion of the Court or a Judge, conveniently be made before a jury, or conducted by the Court through its other ordinary officers, the Court or a Judge may at any time, on such terms as may be thought proper, order any question or issue of fact on any question of account arising therein to be tried either before an official referee, to be appointed as hereinafter provided, or before a special referee to be agreed on between the parties; and any such special referee so agreed on shall have the same powers and duties and proceed in the same manner as an official referee. All such trials before referees shall be conducted in such manner as may be prescribed by Rules of Court, and subject thereto in such manner as the Court or Judge ordering the same shall direct.

Power of referees and effect of their findings.

58. In all cases of any reference to or trial by referees under this Act the referees shall be deemed to be officers of the Court, and shall have such authority for the purpose of such reference or trial as shall be prescribed by Rules of Court or (subject to such Rules) by the Court or Judge ordering such reference or trial; and the report of any referee upon any question of fact on any such trial shall (unless set aside by the Court) be equivalent to the verdict of a jury.

Powers of Court with respect to proceedings before referees.

59. With respect to all such proceedings before referees and their reports, the Court or such Judge as aforesaid shall have, in addition to any other powers, the same or the like powers as are given to any Court whose jurisdiction is hereby transferred to the said High Court with respect to references to arbitration and proceedings before arbitrators and their awards respectively, by the Common Law Procedure Act, 1854.

Before the Judicature Acts there were in existence several modes of reference: A reference to arbitrator by consent of parties. A compulsory reference under the provisions of the C. L. P. Act, 1854. In the Common Law Courts a reference to a Master as to matters of discipline. And in the Court of Chancery the

reference into Chambers. All these modes at present exist with all their incidents. (*Longman* v. *East*, 3 C. P. D. 152.)

Revocation of submission.

By the Common Law either party was able to revoke his submission at any time before the award was made. The first restriction was by 9 & 10 Will. 3, c. 15, which made the party revoking after the agreement had been made a rule of Court, liable to attachment. And by 3 & 4 Will. 4, c. 42, s. 39, when there was a clause in the agreement that the submission might be made a rule of Court, there was no power of revocation without leave of the Court.

A submission, therefore, which contains no clause as to making it a rule of Court may be revoked at any time before it is made a rule of Court under sec. 17 of the C. L. P. Act, 1854. (*Randell* v. *Thompson*, 1 Q. B. D. 748; *Rouse* v. *Meier*, L. R. 6 C. P. 212.) If, however, the party who has revoked seek to bring an action, the Court will stay the proceedings. (*Moffatt* v. *Cornelius*, 26 W. R. 914.)

Survival of old practice.

The old practice with regard to arbitrations continues. (*Cruikshank* v. *Floating Baths Co.*, 1 C. P. D. 260.) When a verdict has been taken subject to a reference, it would appear that, if the award is final and conclusive on the parties, judgment may be signed, though no direction be given to that effect. (*Lloyd* v. *Lewis*, 2 Ex. D. 6.)

Terms still exist for the purpose of setting aside an award. (*Christ's College* v. *Martin*, 3 Q. B. D. 16.) Must be set aside in the Division of which it is a rule. (*Re Lomax*, 28 W. R. 485.)

A reference under the Public Health Act, 1875, is a submission by consent within the meaning of the C. L. P. Act, 1854; and, under sec. 8, the Court has discretion to remit the award for reconsideration at any time. (*Warburton* v. *Haslingden Board*, 48 L. J. 451.) An application under that section should be made within a reasonable time. (*Leicester* v. *Grazebrook*, 40 L. T. 883.)

The text of the sections of the C. L. P. Act, 1854, are subjoined:—

17 *&* 18 *Vict. c.* 125, *ss.* 3—17.

Power to Court or Judge to direct arbitration before trial.

III. If it be made appear, at any time after the issuing of the writ, to the satisfaction of the Court or a Judge, upon the application of either party, that the matter in dispute consists wholly or in part of matters of mere account which cannot conveniently be tried in the ordinary way, it shall be lawful for such Court or Judge, upon such application, if they or he think fit, to decide such matter in a summary manner, or to order that such matter, either wholly or in part, be referred to an arbitrator appointed by the parties, or to an officer of the Court, or, in country causes, to the Judge of any County Court, upon such terms as to costs and otherwise as such Court or Judge shall think reasonable; and the decision or order of such Court or Judge, or the award or certificate of such referee, shall be enforceable by the same process as the finding of a jury upon the matter referred.

Special case may be stated, and question of fact tried.

IV. If it shall appear to the Court or a Judge that the allowance or disallowance of any particular item or items in such account depends upon a question of law fit to be decided by the Court, or upon a question of fact fit to be decided by a jury, or by a Judge upon the consent of both parties as hereinbefore provided, it shall be lawful for such Court or Judge to direct a case to be stated or an issue or issues to be tried; and the decision of the Court upon such case, and the finding of the jury or judge upon

such issue or issues, shall be taken and acted upon by the arbitrator as conclusive.

Arbitrator may state special case.

V. It shall be lawful for the arbitrator upon any compulsory reference under this Act, or upon any reference by consent of parties where the submission is or may be made a rule or order of any of the superior courts of law or equity at Westminster, if he shall think fit, and if it is not provided to the contrary, to state his award, as to the whole or any part thereof, in the form of a special case for the opinion of the Court, and when an action is referred, judgment, if so ordered, may be entered according to the opinion of the Court.

Power to Judge to direct arbitration at time of trial, when issues of fact left to his decision.

VI. If upon the trial of any issue of fact by a Judge under this Act it shall appear to the Judge that the questions arising thereon involve matter of account which cannot conveniently be tried before him, it shall be lawful for him, at his discretion, to order that such matter of account be referred to an arbitrator appointed by the parties, or to an officer of the Court, or, in country causes, to a Judge of any County Court, upon such terms as to costs, and otherwise, as such Judge shall think reasonable; and the award or certificate of such referee shall have the same effect as hereinbefore provided as to the award or certificate of a referee before trial; and it shall be competent for the Judge to proceed to try and dispose of any other matters in question, not referred, in like manner as if no reference had been made.

Proceedings before and power of such arbitrator.

VII. The proceedings upon any such arbitration as aforesaid shall, except otherwise directed hereby or by the submission or document authorising the reference, be conducted in like manner, and subject to the same rules and enactments, as to the power of the arbitrator and of the Court, the attendance of witnesses, the production of documents, enforcing or setting aside the award, and otherwise, as upon a reference made by consent under a rule of Court or Judge's order.

Power to send back to arbitrator.

VIII. In any case where reference shall be made to arbitration as aforesaid, the Court or a Judge shall have power at any time, and from time to time, to remit the matters referred, or any or either of them, to the reconsideration and redetermination of the said arbitrator, upon such terms, as to costs and otherwise, as to the said Court or Judge may seem proper.

Application to set aside the award.

IX. All application to set aside any award made on a compulsory reference under this Act shall and may be made within the first seven days of the term next following the publication of the award to the parties, whether made in vacation or term; and if no such application is made, or if no rule is granted thereon, or if any rule granted thereon is afterwards discharged, such award shall be final between the parties.

Enforcing of awards within period for setting them aside.

X. Any award made on a compulory reference under this Act may, by authority of a Judge, on such terms as to him may seem reasonable, be enforced at any time after seven days from the time of publication, notwithstanding that the time for moving to set it aside has not elapsed.

If action commenced by one party after all have agreed to arbitration, Court or Judge may stay proceedings.

XI. Whenever the parties to any deed or instrument in writing to be hereafter made or executed, or any of them, shall agree that any then existing or future differences between them or any of them shall be referred to arbitration, and any one or more of the parties so agreeing, or any person or persons claiming through or under him or them, shall nevertheless commence any action at law or suit in equity against the other party or parties, or any of them, or against any person or persons claiming through or under

him or them in respect of the matters so agreed to be referred, or any of them, it shall be lawful for the Court in which action or suit is brought, or a Judge thereof, on application by the defendant or defendants, or any of them, after appearance and before plea or answer, upon being satisfied that no sufficient reason exists why such matters cannot be or ought not to be referred to arbitration according to such agreement as aforesaid, and that the defendant was at the time of the bringing of such action or suit and still is ready and willing to join and concur in all acts necessary and proper for causing such matters so to be decided by arbitration, to make a rule or order staying all proceedings in such action or suit, on such terms as to costs and otherwise as to such Court or Judge may seem fit: provided always, that any such rule or order may at any time afterwards be discharged or varied as justice may require.

On failure of parties or arbitrators, Judge may appoint single arbitrator or umpire.

XII. If in any case of arbitration the document authorising the reference provide that the reference shall be to a single arbitrator, and all the parties do not, after differences have arisen, concur in the appointment of an arbitrator; or if any appointed arbitrator refuse to act, or become incapable of acting, or die, and the terms of such document do not show that it was intended that such vacancy should not be supplied, and the parties do not concur in appointing a new one; or if, where the parties or two arbitrators are at liberty to appoint an umpire or third arbitrator, such parties or arbitrators do not appoint an umpire or third arbitrator: or if any appointed umpire or third arbitrator refuse to act, or become incapable of acting, or die, and the terms of the document authorising the reference do not show that it was intended that such a vacancy should not be supplied, and the parties or arbitrators respectively do not appoint a new one; then in every such instance any party may serve the remaining parties or the arbitrators, as the case may be, with a written notice to appoint an arbitrator, umpire, or third arbitrator respectively; and if within seven clear days after such notice shall have been served no arbitrator, umpire, or third arbitrator be appointed, it shall be lawful for any judge of any of the superior courts of law or equity at Westminster, upon summons to be taken out by the party having served such notice as aforesaid, to appoint an arbitrator, umpire, or third arbitrator, as the case may be, and such arbitrator, umpire, and third arbitrator respectively shall have the like power to act in the reference and make an award as if he had been appointed by consent of all parties.

When reference is to two arbitrators and one party fail to appoint, other party may appoint arbitrator to act alone.

XIII. When the reference is or is intended to be to two arbitrators, one appointed by each party, it shall be lawful for either party, in the case of the death, refusal to act, or incapacity of any arbitrator appointed by him, to substitute a new arbitrator, unless the document authorising the reference show that it was intended that the vacancy should not be supplied; and if on such a reference one party fail to appoint an arbitrator, either originally or by way of substitution as aforesaid; for seven clear days after the other party shall have appointed an arbitrator, and shall have served the party so failing to appoint with notice in writing to make the appointment, the party who has appointed an arbitrator may appoint such arbitrator to act as sole arbitrator in the reference, and an award made by him shall be binding on both parties as if the appointment had been by consent; provided, however, that the Court or a Judge may revoke such appointment, on such terms as shall seem just.

Two arbitrators may appoint umpire.

XIV, When the reference is to two arbitrators, and the terms of the document authorising it do not show that it was intended that there should not be an umpire, or provide otherwise for the appointment of an umpire, the two arbitrators may appoint an umpire at any time within the period during which they have power to make an award, unless they be called upon by notice as aforesaid to make the appointment sooner.

Award to be made in three months, unless parties or Court enlarge time.

XV. The arbitrator acting under any such document or compulsory order of reference as aforesaid, or under any order referring the award back, shall make his award under his hand, and (unless such document or order respectively shall contain a different limit of time) within three months after he shall have been appointed, and shall have entered on the reference, or shall have been called upon to act by a notice in writing from any party, but the parties may by consent in writing enlarge the term for making the award; and it shall be lawful for the Superior Court of which such submission, document, or order is or may be made a rule or order, or for any Judge thereof, for good cause to be stated in the rule or order for enlargement, from time to time to enlarge the term for making the award; and if no period be stated for the enlargement in such consent or order for enlargement, it shall be deemed to be an enlargement for one month; and in any case where an umpire shall have been appointed it shall be lawful for him to enter on the reference in lieu of the arbitrators, if the latter shall have allowed their time or their extended time to expire without making an award, or shall have delivered to any party or to the umpire a notice in writing stating that they cannot agree.

Rule to deliver possession of land pursuant to award to be enforced as a judgment in ejectment.

XVI. When any award made on any submission, document, or order of reference as aforesaid directs that possession of any lands or tenements capable of being the subject of an action of ejectment shall be delivered to any party, either forthwith or at any future time, or that any such party is entitled to the possession of any such lands or tenements, it shall be lawful for the Court of which the document authorising the reference is or is made a rule or order to order any party to the reference who shall be in possession of any such lands or tenements, or any person in possession of the same claiming under or put in possession by him since the making of the document authorising the reference, to deliver possession of the same to the party entitled thereto, pursuant to the award, and such rule or order to deliver possession shall have the effect of a judgment in ejectment against every such party or person named in it, and execution may issue, and possession shall be delivered by the sheriff as on a judgment in ejectment.

Agreement or submission in writing may be made rule of Court, unless a contrary intention appear.

XVII. Every agreement or submission to arbitration by consent, whether by deed or instrument in writing not under seal, may be made a rule of any one of the superior Courts of Law or Equity at Westminster, on the application of any party thereto, unless such agreement or submission contain words purporting that the parties intend that it should not be made a rule of Court; and if in any such agreement or submission it is provided that the same shall or may be made a rule of one in particular of such superior Courts, it may be made a rule of that Court only; and if when there is no such provision a case be stated in the award for the opinion of one of the superior Courts, and such Court be specified in the award, and the document authorising the reference have not, before the publication of the award to the parties, been made a rule of Court, such document may be made a rule only

of the Court specified in the award; and when in any case the document authorising the reference is or has been made a rule or order of any one of such Superior Courts, no other of such Courts shall have any jurisdiction to entertain any motion respecting the arbitration or award.

Her Majesty may establish registries in the country for the Supreme Court.

60. And whereas it is expedient to facilitate the prosecution in country districts of such proceedings as may be more speedily, cheaply and conveniently carried on therein, it shall be lawful for Her Majesty, by Order in Council, from time to time to direct that there shall be district registrars in such places as shall be in such Order mentioned for districts to be thereby defined, from which writs of summons for the commencement of actions in the High Court of Justice may be issued, and in which such proceedings may be taken and recorded as are hereinafter mentioned; and Her Majesty may thereby appoint that any registrar of any County Court, or any registrar or prothonotary or district prothonotary, of any local Court whose jurisdiction is thereby transferred to the said High Court of Justice, or from which an appeal is hereby given to the said Court of Appeal, or any person who, having been a district registrar of the Court of Probate, or of the Admiralty Court, shall under this Act become and be a district registrar of the said High Court of Justice, or who shall hereafter be appointed such district registrar, shall and may be a district registrar of the said High Court for the purpose of issuing such writs as aforesaid, and having such proceedings taken before him as are hereinafter mentioned. This section shall come into operation immediately upon the passing of this Act.

Amended by sec. 13 of the Act of 1875.

Seals of district registries.

61. In every such district registry such seal shall be used as the Lord Chancellor shall from time to time, either before or after the time fixed for the commencement of this Act, direct, which seal shall be impressed on every writ and other document issued out of or filed in such district registry, and all such writs and documents, and all exemplifications and copies thereof purporting to be sealed with the seal of any such district registry, shall in all parts of the United Kingdom be received in evidence without further proof thereof.

Powers of district registrars.

62. All such district registrars shall have power to administer oaths and perform such other duties in

respect of any proceedings pending in the said High Court of Justice or in the said Court of Appeal as may be assigned to them from time to time by Rules of Court, or by any special order of the Court.

63. Repealed by sec. 33 and schedule of the Act of 1875.

Proceedings to be taken in district registries.

64. Subject to the Rules of Court in force for the time being, writs of summons for the commencement of actions in the High Court of Justice, shall be issued by the district Registrars when thereunto required; and unless any order to the contrary shall be made by the High Court of Justice, or by any Judge thereof, all such further proceedings, including proceedings for the arrest or detention of a ship, her tackle, apparel, furniture, cargo, or freight, as may and ought to be taken by the respective parties to such action in the said High Court down to and including entry for trial, or (if the plaintiff is entitled to sign final judgment or to obtain an order for an account by reason of the non-appearance of the defendant) down to and including final judgment, or an order for an account, may be taken before the district registrar, and recorded in the district registry, in such manner as may be prescribed by Rules of Court; and all such other proceedings in any such action as may be prescribed by Rules of Court shall be taken and if necessary may be recorded in the same District Registry.

Power for Court to remove proceedings from district registries.

65. Any party to an action in which a writ of summons shall have been issued from any such district registry shall be at liberty at any time to apply, in such manner as shall be prescribed by Rules of Court, to the said High Court, or to a Judge in Chambers of the Division of the said High Court to which the action may be assigned, to remove the proceedings from such district registry into the proper office of the said High Court; and the Court or Judge may, if it be thought fit, grant such application, and in such case the proceedings and such original documents, if any, as may be filed therein shall upon receipt of such order be transmitted by the district registrar to the proper office of the said High Court, and the said action shall thenceforth proceed in the said High Court in the same manner as if it had been originally commenced by a writ of summons issued out of the

proper Office in London; or the Court or Judge, if it be thought right, may thereupon direct that the proceedings may continue to be taken in such District Registry.

Accounts and inquiries may be referred to district registrars.

66. It shall be lawful for the Court, or any Judge of the Division to which any cause or matter pending in the said High Court is assigned, if it shall be thought fit, to order that any books or documents may be produced, or any accounts taken or inquiries made, in the office of or by any such district registrar as aforesaid; and in any such case the district registrar shall proceed to carry all such directions into effect in the manner prescribed; and in any case in which any such accounts or inquiries shall have been directed to be taken or made by any district registrar, the report in writing of such district registrar as to the result of such accounts or inquiries may be acted upon by the Court, as to the Court shall seem fit.

30 & 31 Vict. c. 142, ss. 5, 7, 8, and 10 to extend to actions in High Court.

67. The provisions contained in the fifth, seventh, eighth, and tenth sections of the County Courts Act, 1867, shall apply to all actions commenced or pending in the said High Court of Justice in which any relief is sought which can be given in a County Court.

Sections **68, 69, 70, 71, 72, 73,** and **74** are all repealed by sec. 33 and sch. to Act of 1875, and Sections **16, 17, 18, 19, 20,** and **21** of that Act are substituted for them.

Councils of Judges to consider procedure and administration of justice.

75. A council of the Judges of the Supreme Court, of which due notice shall be given to all the said Judges, shall assemble once at least in every year, on such day or days as shall be fixed by the Lord Chancellor, with the concurrence of the Lord Chief Justice of England, for the purpose of considering the operation of this Act and of the Rules of Court for the time being in force, and also the working of the several offices and the arrangements relative to the duties of the officers of the said Courts respectively, and of inquiring and examining into any defects which may appear to exist in the system of procedure or the administration of the law in the said High Court of Justice or the said Court of Appeal, or in any other Court from which any appeal lies to the said High Court or any Judge thereof, or to the said Court of Appeal: And they shall report annually to one of Her

Majesty's Principal Secretaries of State what (if any) amendments or alterations it would in their judgment be expedient to make in this Act, or otherwise relating to the administration of justice, and what other provisions (if any) which cannot be carried into effect without the authority of Parliament it would be expedient to make for the better administration of justice. Any extraordinary Council of the said Judges may also at any time be convened by the Lord Chancellor.

Acts of Parliament relating to former Courts to be read as applying to Courts under this Act.

76. All Acts of Parliament relating to the several Courts and Judges, whose jurisdiction is hereby transferred to the said High Court of Justice and the said Court of Appeal respectively, or wherein any of such Courts or Judges are mentioned or referred to, shall be construed and take effect, so far as relates to anything done or to be done after the commencement of this Act, as if the said High Court of Justice or the said Court of Appeal, and the Judges thereof, respectively, as the case may be, had been named therein instead of such Courts or Judges whose jurisdiction is so transferred respectively; and in all cases not hereby expressly provided for in which, under any such Act, the concurrence or the advice or consent of the Judge or any Judges, or of any number of the Judges, of any one or more of the Courts whose jurisdiction is hereby transferred to the High Court of Justice is made necessary to the exercise of any power or authority capable of being exercised after the commencement of this Act, such power or authority may be exercised by and with the concurrence, advice, or consent of the same or a like number of Judges of the said High Court of Justice; and all general and other Commissions, issued under the Acts relating to the Central Criminal Court or otherwise, by virtue whereof any Judges of any of the Courts whose jurisdiction is so transferred may, at the commencement of this Act, be empowered to try, hear, or determine any causes or matters, criminal or civil, shall remain and be in full force and effect, unless and until they shall respectively be in due course of law revoked or altered.

Part V.

Part V. relates to the officers and offices of the Supreme Court, and has been omitted here with the exception of sec. 87, which defines the position of solicitors.

Solicitors and attorneys.

87. From and after the commencement of this Act all persons admitted as solicitors, attorneys, or proctors of or by law empowered to practise in any Court, the jurisdiction of which is hereby transferred to the High Court of Justice or the Court of Appeal, shall be called solicitors of the Supreme Court, and shall be entitled to the same privileges and be subject to the same obligations, so far as circumstances will permit, as if this Act had not passed; and all persons who from time to time, if this Act had not passed, would have been entitled to be admitted as solicitors, attorneys, or proctors of or been by law empowered to practise in any such Courts, shall be entitled to be admitted and to be called solicitors of the Supreme Court, and shall be admitted by the Master of the Rolls, and shall, as far as circumstances will permit, be entitled as such solicitors to the same privileges and be subject to the same obligations as if this Act had not passed.

Any solicitors, attorneys, or proctors to whom this section applies shall be deemed to be officers of the Supreme Court; and that Court, and the High Court of Justice, and the Court of Appeal respectively, or any Division or Judge thereof, may exercise the same jurisdiction in respect of such solicitors or attorneys as any one of Her Majesty's superior courts of law or equity might previously to the passing of this Act have exercised in respect of any solicitor or attorney admitted to practise therein.

The admission of solicitors is regulated by 40 & 41 Vict. c. 25; by the 17th sec. solicitors may practise as proctors.

Part VI.

Jurisdiction of Inferior Courts.

Power by order in Council to confer jurisdiction on inferior Courts.

88. It shall be lawful for Her Majesty from time to time by Order in Council to confer on any inferior Court of civil jurisdiction, the same jurisdiction in Equity and in Admiralty, respectively, as any County Court now has, or may hereafter have, and such jurisdiction, if and when conferred, shall be exercised in the manner by this Act directed.

Powers of inferior Courts having Equity and Admiralty jurisdiction.

89. Every inferior Court which now has or which may after the passing of this Act have jurisdiction in Equity, or at Law and in Equity, and in Admiralty respectively, shall, as regards all causes of action

within its jurisdiction for the time being, have power to grant, and shall grant in any proceeding before such Court, such relief, redress, or remedy, or combination of remedies, either absolute or conditional, and shall in every such proceeding give such and the like effect to every ground of defence or counter-claim, equitable or legal (subject to the provision next hereinafter contained), in as full and ample a manner as might and ought to be done in the like case by the High Court of Justice.

Counter claims in inferior Courts, and transfers therefrom.

90. Where in any proceeding before any such inferior Court any defence or counter-claim of the defendant involves matter beyond the jurisdiction of the Court, such defence or counter-claim shall not affect the competence or the duty of the Court to dispose of the whole matter in controversy so far as relates to the demand of the plaintiff and the defence thereto, but no relief exceeding that which the Court has jurisdiction to administer shall be given to the defendant upon any such counter-claim: Provided always, that in such case it shall be lawful for the High Court, or any Division or Judge thereof, if it shall be thought fit, on the application of any party to the proceeding, to order that the whole proceeding be transferred from such inferior Court to the High Court, or to any Division thereof; and in such case the Record in such proceeding shall be transmitted by the Registrar, or other proper officer, of the inferior Court to the said High Court; and the same shall thenceforth be continued and prosecuted in the said High Court as if it had been originally commenced therein.

Under this section an inferior Court has jurisdiction to entertain a claim set up by way of counterclaim, although it is in respect of matters which arose beyond its local jurisdiction, but the power to grant relief in respect of such counterclaim is limited to the same amount as the plaintiff has claimed in the action. (*Davis* v. *The Flagstaff Mining Co.*, 3 C. P. D. 228.)

Rules of law to supply to inferior Courts.

91. The several rules of law enacted and declared by this Act shall be in force and receive effect in all Courts whatsoever in England, so far as the matters to which such Rules relate shall be respectively cognisable by such Courts.

Part VII.

Miscellaneous Provisions.

Transfer of books and papers to Supreme Court.

92. All books, documents, papers, and chattels in the possession of any Court, the jurisdiction of which

is hereby transferred to the High Court of Justice or to the Court of Appeal, or of any officer or person attached to any such Court, as such officer, or by reason of his being so attached, shall be transferred to the Supreme Court, and shall be dealt with by such officer or person in such manner as the High Court of Justice or the Court of Appeal may by order direct; and any person failing to comply with any order made for the purpose of giving effect to this section shall be guilty of a contempt of the Supreme Court.

Saving as to circuits, &c.

93. This Act, except as herein is expressly directed, shall not, unless or until other commissions are issued in pursuance thereof, affect the circuits of the Judges or the issue of any Commissions of Assize, Nisi Prius, Oyer and Terminer, Gaol Delivery, or other commissions for the discharge of civil or criminal business on circuit or otherwise, or any patronage vested in any Judges going circuit, or the position, salaries, or duties of any officers transferred to the Supreme Court who are now officers of the Superior Courts of Common Law, and who perform duties in relation to either the civil or criminal business transacted on circuit.

Saving as to Lord Chancellor.

94. This Act, except as far as herein is expressly directed, shall not affect the office or position of Lord Chancellor; and the officers of the Lord Chancellor shall continue attached to him in the same manner as if this Act had not passed; and all duties, which any officer of the Court of Chancery may now be required to perform in aid of any duty whatsover of the Lord Chancellor, may in like manner be required to be performed by such officer when transferred to the Supreme Court, and by his successors.

Saving as to Chancellor of Lancaster.

95. This Act, except so far as herein is expressly directed, shall not affect the offices, position, or functions of the Chancellor of the County Palatine of Lancaster.

Saving as to Chancellor of the Exchequer

96. The Chancellor of the Exchequer shall not be a Judge of the High Court of Justice, or of the Court of Appeal, and shall cease to exercise any judicial functions hitherto exercised by him as a Judge of the Court of Exchequer; but save as aforesaid he shall remain in the same position as to duties and salary, and other incidents of his office, as if this Act had not

passed. The same order and course with respect to the appointment of sheriffs shall be used and observed in the Exchequer Division of the said High Court as has been heretofore used and observed in the Court of Exchequer. and sheriffs.

97. Nothing in this Act contained shall affect the office of Lord Treasurer, except that any Lord Treasurer shall not hereafter exercise any judicial functions hitherto exercised by him as a Judge of the Court of Exchequer; and nothing in this Act shall affect the office of the Receipt of the Exchequer. Saving as to Lord Treasurer and office of the Receipt of Exchequer.

98. When the Great Seal is in commission, the Lords Commissioners shall represent the Lord Chancellor for the purposes of this Act, save that as to the Presidency of the Court of Appeal, and the appointment or approval of officers, or the sanction to any order for the removal of officers, or any other act to which the concurrence or presence of the Lord Chancellor is hereby made necessary, the powers given to the Lord Chancellor by this Act may be exercised by the Senior Lord Commissioner for the time being. Provisions as to Great Seal being in commission.

99. From and after the commencement of this Act, the Counties Palatine of Lancaster and Durham shall respectively cease to be counties palatine, so far as respects the issue of commissions of assize, or other like commissions, but not further or otherwise; and all such commissions may be issued for the trial of all causes and matters within such counties respectively in the same manner in all respects as in any other counties of England and Wales. Provisions as to commissions in counties palatine.

100. In the construction of this Act, unless there is anything in the subject or context repugnant thereto, the several words hereinafter mentioned shall have, or include, the meanings following; (that is to say,) Interpretation of terms.

"Lord Chancellor" shall include Lord Keeper of the Great Seal.

"The High Court of Chancery" shall include the Lord Chancellor.

"The Court of Appeal in Chancery" shall include the Lord Chancellor as a Judge on Rehearing or Appeal.

"London Court of Bankruptcy" shall include the Chief Judge in Bankruptcy.

"The Treasury" shall mean the Commissioners of Her Majesty's Treasury for the time being, or any two of them.

"Rules of Court" shall include forms.

"Cause" shall include any action, suit, or other original proceeding between a plaintiff and a defendant, and any criminal proceeding by the Crown.

"Suit" shall include action.

"Action" shall mean a civil proceeding commenced by writ, or in such other manner as may be prescribed by Rules of Court; and shall not include a criminal proceeding by the Crown.

"Plaintiff" shall include every person asking any relief (otherwise than by way of counter-claim as a defendant) against any other person by any form of proceeding, whether the same be taken by action, suit, petition, motion, summons, or otherwise.

"Petitioner" shall include every person making any application to the Court, either by petition, motion, or summons, otherwise than as against any defendant.

"Defendant" shall include every person served with any writ of summons or process, or served with notice of, or entitled to attend any proceedings.

"Party" shall include every person served with notice of, or attending any proceeding, although not named on the Record.

"Matter" shall include every proceeding in the Court not in a cause.

"Pleading" shall include any petition or summons, and also shall include the statements in writing of the claim or demand of any plaintiff, and of the defence of any defendant thereto, and of the reply of the plaintiff to any counter-claim of a defendant.

"Judgment" shall include decree.

"Order" shall include rule.

"Oath" shall include solemn affirmation and statutory declaration.

"Crown cases reserved" shall mean such questions of law reserved in Criminal Trials as are mentioned in the Act of the eleventh and twelfth years of Her Majesty's reign, chapter seventy-eight.

"Pension" shall include retirement and superannuation allowance.

"Existing" shall mean existing at the time appointed for the commencement of this Act.

[*Schedule.*]

Repealed by sec. 33 and schedule of the Act of 1875.

SUPREME COURT OF JUDICATURE (COMMENCEMENT) ACT, 1874.

37 & 38 VICT. c. 83.

An Act for delaying the coming into operation of the Supreme Court of Judicature Act, 1873.

[7th August, 1874.]

WHEREAS it is expedient to extend the time appointed for the commencement of the Supreme Court of Judicature Act, 1873:

Be it enacted by the Queen's most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows:

Repeal of 36 & 37 Vict. c. 66, s. 2.

1. The second section of the Supreme Court of Judicature Act, 1873, is hereby repealed.

Commencement of Supreme Court of Judicature Act, 1873.

2. The Supreme Court of Judicature Act, 1873, except any provisions thereof directed to take effect on the passing of the said Act, shall commence and come into operation on the first day of November one thousand eight hundred and seventy-five, and the said first day of November one thousand eight hundred and seventy-five shall be taken to be the time appointed for the commencement of the said Act.

Short title of Act.

3. This Act may be cited for all purposes as the Supreme Court of Judicature (Commencement) Act, 1874.

SUPREME COURT OF JUDICATURE (COMMENCEMENT) ACT, 1874.

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Short title of Act.

3. This Act may be cited for all purposes as the Supreme Court of Judicature (Commencement) Act, 1874.

SUPREME COURT OF JUDICATURE ACT, 1875.

38 & 39 Vict. c. 77.

An Act to amend and extend the Supreme Court of Judicature Act, 1873.

[11th August, 1875.]

WHEREAS it is expedient to amend and extend the Supreme Court of Judicature Act, 1873:

Be it therefore enacted by the Queen's most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows:

Short title, and construction with 36 & 37 Vict. c. 66.

1. This Act shall, so far as is consistent with the tenour thereof, be construed as one with the Supreme Court of Judicature Act, 1873, (in this Act referred to as the principal Act,) and together with the principal Act may be cited as the Supreme Court of Judicature Acts, 1873 and 1875, and this Act may be cited separately as the Supreme Court of Judicature Act, 1875.

Commencement of Act.

2. This Act, except any provision thereof which is declared to take effect before the commencement of this Act, shall commence and come into operation on the first day of November, 1875.

The remainder of this section is repealed by sec. 24 of the App. Jur. Act, 1876.

Explanation of 36 & 37 Vict. c. 66, s. 5 as to number of Judges.

3. Whereas by section 5 of the principal Act it is provided as follows: "that if at the commencement of this Act the number of "puisne justices and junior barons who shall become Judges of the said High Court shall exceed twelve in the whole, no new Judge

of the said High Court shall be appointed in the place of any such puisne justice or junior baron who shall die or resign while such whole number shall exceed twelve, it being intended that the permanent number of Judges of the said High Court shall not exceed twenty-one;" and whereas, having regard to the state of business in the several courts whose jurisdiction is transferred by the principal Act to the High Court of Justice, it is expedient that the number of Judges thereof shall not at present be reduccd: Be it enacted, that so much of the said section as is hereinbefore recited shall be repealed.

The Lord Chancellor shall not be deemed to be a permanent Judge of that Court, and the provisions of the said section relating to the appointment and style of the Judges of the said High Court shall not apply to the Lord Chancellor.

Constitution of Court of Appeal.

4. Her Majesty's Court of Appeal, in this Act and in the principal Act referred to as the Court of Appeal, shall be constituted as follows: There shall be five ex-officio Judges thereof, and also so many ordinary Judges, *not exceeding three at any one time*, as Her Majesty shall from time to time appoint.

Repealed by s. 15 of App. Jur. Act, 1876.

The ex-officio Judges shall be the Lord Chancellor, the Lord Chief Justice of England, the Master of the Rolls, the Lord Chief Justice of the Common Pleas, and the Lord Chief Baron of the Exchequer.

The first ordinary Judges of the said Court shall be the present Lord Justices of Appeal in Chancery, and such one other person as Her Majesty may be pleased to appoint by Letters Patent. Such appointment may be made either before or after the commencement of this Act, but if made before shall take effect at the commencement of the Act.

See s. 4, Act of 1877.

The ordinary Judges of the Court of Appeal shall be styled *Justices of Appeal.*

The Lord Chancellor may by writing addressed to the President of any one or more of the following divisions of the High Court of Justice, that is to say, the Queen's Bench Division, the Common Pleas Division, the Exchequer Division, and the Probate, Divorce, and Admiralty Divison, request the attendance at any time, except during the times of the spring or summer circuits, of an additional Judge from such division or divisions(not being ex-officio Judge or Judges of the Court of Appeal) at the sittings of the Court of Appeal,

and a Judge, to be selected by the division from which his attendance is requested, shall attend accordingly.

Every additional Judge, during the time that he attends the sittings of Her Majesty's Court of Appeal, shall have all the jurisdiction and powers of a Judge of the said Court of Appeal, but he shall not otherwise be deemed to be a Judge of the said Court, or to have ceased to be a Judge of the division of the High Court of Justice to which he belongs.

Section fifty-four of the principal Act is hereby repealed, and instead thereof the following enactment shall take effect: No Judge of the said Court of Appeal shall sit as a Judge on the hearing of an appeal from any judgment or order made by himself, or made by any Divisional Court of the High Court of which he was *and is* a member.

Whenever the office of an ordinary Judge of the Court of Appeal becomes vacant a new Judge may be appointed thereto by Her Majesty by Letters Patent.

In *Fisher* v. *The Val de Travers Co.*, 1 C. P. D. 259, the Court held that the section must be read as if the words "*and is*" were not in it.

Tenure of office of Judges, and oaths of office. Judges not to sit in the House of Commons.

5. All the Judges of the High Court of Justice, and of the Court of Appeal respectively, with the exception of the Lord Chancellor, shall hold their offices as such Judges respectively during good behaviour, subject to a power of removal by Her Majesty, on an address presented to Her Majesty by both Houses of Parliament. No Judge of either of the said Courts shall be capable of being elected to or of sitting in the House of Commons. Every person appointed after the passing of this Act to be Judge of either of the said Courts (other than the Lord Chancellor), when he enters on the execution of his office, shall take, in the presence of the Lord Chancellor, the oath of allegiance, and judicial oath as defined by the Promissory Oaths Act, 1868. The oaths to be taken by the Lord Chancellor shall be the same as heretofore.

Precedence of Judges.

6. The Lord Chancellor shall be President of the Court of Appeal; the other ex-officio Judges of the Court of Appeal shall rank in the order of their present respective official precedence. The ordinary Judges of the Court of Appeal, if not entitled to precedence as Peers or Privy Councillors, shall rank

according to the priority of their respective appointments as such Judges.

The Judges of the High Court of Justice who are not also Judges of the Court of Appeal shall rank next after the Judges of the Court of Appeal, and, among themselves (subject to the provisions in the principal Act contained as to existing Judges), according to the priority of their respective appointments.

Jurisdiction of Lords Justices in respect of lunatics.

7. Any jurisdiction usually vested in the Lords Justices of Appeal in Chancery or either of them, in relation to the persons and estates of idiots, lunatics, and persons of unsound mind, shall be exercised by such Judge or Judges of the High Court of Justice or Court of Appeal as may be intrusted by the sign manual of Her Majesty or Her successors with the care and commitment of the custody of such persons and estates; and all enactments referring to the Lords Justices as so intrusted shall be construed as if such Judge or Judges so intrusted had been named therein instead of such Lords Justices: Provided that each of the persons who may at the commencement of the principal Act be Lords Justices of Appeal in Chancery shall, during such time as he continues to be a Judge of the Court of Appeal, and is intrusted as aforesaid, retain the jurisdiction vested in him in relation to such persons and estates as aforesaid.

Admiralty Judges and registrar.

8. Whereas by section eleven of the principal Act it is provided as follows: "Every existing Judge who is by this Act made a Judge of the High Court of Justice or an ordinary Judge of the Court of Appeal shall, as to tenure of office, rank, title, salary, pension, patronage, and powers of appointment or dismissal, and all other privileges and disqualifications, remain in the same condition as if this Act had not passed; and, subject to the change effected in their jurisdiction and duties by or in pursuance of the provisions of this Act, each of the said existing Judges shall be capable of performing and liable to perform all duties which he would have been capable of performing or liable to perform in pursuance of any Act of Parliament, law, or custom if this Act had not passed. No Judge appointed before the passing of this Act shall be required to act under any commission of assize, nisi prius, oyer and terminer, or gaol delivery, unless

he was so liable by usage or custom at the commencement of this Act;"

And whereas the Judge of the High Court of Admiralty is by the principal Act appointed a Judge of the High Court of Justice;

And whereas such Judge is, as to salary and pension, inferior in position to the other puisne Judges of the Superior Courts of Common Law, but holds certain ecclesiastical and other offices in addition to the office of Judge of the High Court of Admiralty:

And whereas it is expedient that such Judge, if he be willing to relinquish such other offices, should be placed in the same position as to rank, salary, and pension as the other puisne Judges of the Superior Courts of Common Law:

Be it enacted that—

If the existing Judge of the High Court of Admiralty under his hand signifies to the Lord Chancellor in writing, before the commencement of the principal Act, that he is willing to relinquish such other offices as aforesaid, and does before the commencement of the principal Act resign all other offices of emolument held by him except the office of Judge of the High Court of Admiralty, he shall, from and after the commencement of the principal Act, be entitled to the same rank, salary, and pension as if he had been appointed a Judge of the High Court of Justice immediately on the commencement of the principal Act, with this addition, that, in reckoning service for the purposes of his pension, his service as a Judge of the High Court of Admiralty shall be reckoned in the same manner as if the High Court of Justice had been established at the time of his accepting the office of Judge of the High Court of Admiralty, and he had continued from such time to be a Judge of the said High Court of Justice.

The present holder of the office of registrar of Her Majesty in Ecclesiastical and Admiralty causes, shall, as respects any appeals in which he would otherwise be concerned coming within the cognizance of the Court of Appeal, be deemed to be an officer attached to the Supreme Court; and the office, so far as respects the duties in relation to such appeals as aforesaid, shall be deemed to be a separate office within the meaning of section seventy-seven of the principal Act, and may be dealt with accordingly. He shall be entitled, in so far as he sustains any loss of emolu-

ments by or in consequence of the principal Act or this Act, to prefer a claim to the Treasury in the same manner as an officer paid out of fees whose emoluments are affected by the passing of the principal Act is entitled to do under section eighty of the principal Act.

Subject as aforesaid, the person who is at the time of the passing of this Act registrar of Her Majesty in Ecclesiastical and Admiralty causes shall, notwithstanding anything in the principal Act or this Act, have the same rank and hold his office upon the same tenure and upon the same terms and conditions as heretofore; but it shall be lawful for Her Majesty by Order in Council made upon the recommendation of the Lord Chancellor, with the concurrence of the Treasury, to make, notwithstanding anything contained in any Act of Parliament, such arrangements with respect to the duties of the said last-mentioned office, either by abolition thereof or otherwise, as to Her Majesty may seem expedient: Provided that such Order shall not take effect during the continuance in such office of the said person so being registrar at the time of the passing of this Act, without his assent.

Every Judge of the Probate, Divorce, and Admiralty Division of the said High Court of Justice appointed after the passing of this Act shall, so far as the state of business in the said division will admit, share with the Judges mentioned in section thirty-seven of the principal Act the duty of holding sittings for trials by jury in London and Middlesex, and sittings under commissions of assize, oyer and terminer, and gaol delivery.

London Court of Bankruptcy not to be transferred to High Court of Justice.

9. The London Court of Bankruptcy shall not be united or consolidated with the Supreme Court of Judicature, and the jurisdiction of that Court shall not be transferred under the principal Act to the High Court of Justice, but shall continue the same in all respects as if such transfer had not been made by the principal Act, and the principal Act shall be construed as if such union, consolidation, and transfer had not been made: Provided that—

(1.) The office of Chief Judge in Bankruptcy shall be filled by such one of the Judges of the High Court of Justice appointed since the passing of the Bankruptcy Act, 1869, or, with his consent, of such one of the Judges

appointed prior to the passing of the last-mentioned Act, as may be appointed by the Lord Chancellor to that office; and,

(2.) The appeal from the London Court of Bankruptcy shall lie to the Court of Appeal in accordance with the principal Act.

Amendment of 36 & 37 Vict. c. 66, s. 25, as to rules of law upon certain points.

10. Whereas, by section twenty-five of the principal Act, after reciting that it is expedient to amend and declare the law to be thereafter administered in England as to the matters thereinafter mentioned, certain enactments are made with respect to the law, and it is expedient to amend the said section: Be it therefore enacted as follows:—

Sub-section one of clause twenty-five of the principal Act is hereby repealed, and instead thereof the following enactment shall take effect; (that is to say,) in the administration by the Court of the assets of any person who may die after the commencement of this Act, and whose estate may prove to be insufficient for the payment in full of his debts and liabilities, and in the winding up of any company under the Companies Acts, 1862 and 1867, whose assets may prove to be insufficient for the payment of its debts and liabilities and the costs of winding up, the same rules shall prevail and be observed as to the respective rights of secured and unsecured creditors, and as to debts and liabilities provable, and as to the valuation of annuities and future and contingent liabilities respectively, as may be in force for the time being under the Law of Bankruptcy with respect to the estates of persons adjudged bankrupt; and all persons who in any such case would be entitled to prove for and receive dividends out of the estate of any such deceased person, or out of the assets of any such company, may come in under the decree or order for the administration of such estate, or under the winding up of such company, and make such claims against the same as they may respectively be entitled to by virtue of this Act.

In sub-section seven of the said section the reference to the date of the passing of the principal Act shall be deemed to refer to the date of the commencement of the principal Act.

In the winding up of a company a contributory cannot set off a

judgment debt due from the company to him against calls by the official liquidator. (*Gill's Case*, 12 Ch. D. 755.)

A garnishee order *nisi* gives no security until it has been served. (*Re Stanhope Collieries*, W. N. 1879, 42.)

There seems to be considerable divergence of opinion as to whether the rule in Bankruptcy that an execution creditor loses the benefit of an execution for more than £50 if the sheriff has notice of bankruptcy within 14 days. (*Re Taylor*, 8 Ch. D. 183; *Re Printing, &c. Co.*, 8 Ch. D. 535; *Re Richards*, 11 Ch. D. 676; *Re Therese*, W. N. 1879, 22.)

Provision as to option for any plaintiff (subject to rules) to choose in what division he will sue,—in substitution for 36 & 37 Vict. c. 66, s. 35.

11. Subject to any Rules of Court, and to the provisions of the principal Act and this Act and to the power of transfer, every person by whom any cause or matter may be commenced in the said High Court of Justice shall assign such cause or matter to one of the divisions of the said High Court as he may think fit, by marking the document by which the same is commenced with the name of such Division, and giving notice thereof to the proper officer of the Court: Provided that—

(1.) All interlocutory and other steps and proceedings in or before the said High Court in any cause or matter subsequent to the commencement thereof, shall be taken (subject to any Rules of Court, and to the power of transfer) in the Division of the said High Court to which such cause or matter is for the time being attached; and,

(2.) If any plaintiff or petitioner shall at any time assign his cause or matter to any Division of the said High Court to which, according to the Rules of Court or the provision of the principal Act or this Act, the same ought not to be assigned, the Court, or any Judge of such Division, upon being informed thereof, may, on a summary application at any stage of the cause or matter, direct the same to be transferred to the Division of the said Court to which, according to such rules or provisions, the same ought to have been assigned; or he may, if he think it expedient so to do, retain the same in the Division in which the same was commenced; and all steps and proceedings whatsoever taken by the plaintiff or petitioner or by any other party in any such cause or matter, and all orders made therein by the Court or any Judge thereof before any such transfer shall

be valid and effectual to all intents and purposes in the same manner as if the same respectively had been taken and made in the proper Division of the said Court to which such cause or matter ought to have been assigned; and

(3.) Subject to rules of Court, a person commencing any cause or matter shall not assign the same to the Probate, Divorce, and Admiralty Division unless he would have been entitled to commence the same in the Court of Probate, or in the Court for Divorce and Matrimonial Causes, or in the High Court of Admiralty, if this Act had not passed.

Sittings of Court of Appeal.

12. Every appeal to the Court of Appeal shall, where the subject matter of the appeal is a final order, decree, or judgment, be heard before not less than three Judges of the said Court sitting together, and shall, when the subject-matter of the appeal is an interlocutory order, decree, or judgment, be heard before not less than two Judges of the said Court sitting together.

Any doubt which may arise as to what decrees, orders, or judgments are final, and what are interlocutory, shall be determined by the Court of Appeal.

Subject to the provisions contained in this section the Court of Appeal may sit in two divisions at the same time.

Amendment of s. 60 of 36 & 37 Vict. c. 66 as to district registrars.

13. Whereas by section sixty of the principal Act it is provided that for the purpose of facilitating the prosecution in country districts of legal proceedings, it shall be lawful for Her Majesty by Order in Council from time to time to direct that there shall be district registrars in such places as shall be in such order mentioned for districts to be thereby defined; and whereas it is expedient to amend the said section, be it therefore enacted that—

Where any such Order has been made, two persons may, if required, be appointed to perform the duties of district registrar in any district named in the Order, and such persons shall be deemed to be joint district registrars, and shall perform the said duties in such manner as may from time to time be directed by the said Order, or any Order in Council amending the same.

Moreover the registrar of any Inferior Court of

Record having jurisdiction in any part of any district defined by such Order (other than a County Court) shall, if appointed by Her Majesty, be qualified to be a district registrar for the said district or for any and such part thereof as may be directed by such Order or any Order amending the same.

Every district registrar shall be deemed to be an officer of the Supreme Court, and be subject accordingly to the jurisdiction of such Court, and of the Divisions thereof.

Amendment of 36 & 37 Vict. c. 66, s. 87, as to enactments relating to attorneys.

14. Whereas under section eighty-seven of the principal Act, solicitors and attorneys will after the commencement of this Act be called solicitors of the Supreme Court: Be it therefore enacted that—

The registrar of attorneys and solicitors in England shall be called the registrar of solicitors, and the Lord Chief Justice of England, the Master of the Rolls, the Lord Chief Justice of the Court of Common Pleas, and the Lord Chief Baron, or any two of them, may, from time, by regulation adapt any enactments relating to attorneys, and any declaration, certificate, or form required under those enactments, to the solicitors of the Supreme Court under section eighty-seven of the principal Act.

Appeal from inferior Court of Record.

15. It shall be lawful for Her Majesty from time to time, by Order in Council, to direct that the enactments relating to appeals from County Courts shall apply to any other Inferior Court of Record; and those enactments, subject to any exceptions, conditions, and limitations contained in the Order, shall apply accordingly, as from the date mentioned in the Order.

Rules in first schedule in substitution for 36 & 37 Vict. c. 66, s. 69, and schedule.

16. The Rules of Court in the First Schedule to this Act shall come into operation at the commencement of this Act, and as to all matters to which they extend shall thenceforth regulate the proceedings in the High Court of Justice and Court of Appeal. But such Rules of Court, and also all such other Rules of Court (if any) as may be made after the passing and before the commencement of this Act under the authority of the next section, may be annulled or altered by the authority by which new Rules of Court may be made after the commencement of this Act.

Provision as to making, &c., of Rules of Court

17. Her Majesty may at any time after the passing and before the commencement of this Act, by Order in Council, made upon the recommendation of the Lord

Chancellor, and the Lord Chief Justice of England, the Master of the Rolls, the Lord Chief Justice of the Common Pleas, the Lord Chief Baron of the Exchequer, and the Lords Justices of Appeal in Chancery, or any five of them, and the other Judges of the several Courts intended to be united and consolidated by the principal Act as amended by this Act, or of a majority of such other Judges, make any further or additional Rules of Court for carrying the principal Act and this Act into effect, and in particular for all or any of the following matters, so far as they are not provided for by the Rules in the First Schedule to this Act; that is to say,

before or after the commencement of the Act,—in substitution for 36 & 37 Vict. c. 66, ss, 68, 69, 74, and sch.

(1.) For regulating the sittings of the High Court of Justice and the Court of Appeal, and of any Divisional or other Courts thereof respectively, and of the Judges of the said High Court sitting in Chambers; and,

(2.) For regulating the pleading, practice, and procedure in the High Court of Justice and Court of Appeal; and

(3.) Generally, for regulating any matters relating to the practice and procedure of the said Courts respectively, or to the duties of the officers thereof, or of the Supreme Court, or to the costs of proceedings therein.

In substitution for 36 & 37 Vict. c. 66, s. 74.

From and after the commencement of this Act, the Supreme Court may at any time, with the concurrence of a majority of the Judges thereof present at any meeting for that purpose held (of which majority the Lord Chancellor shall be one), alter and annul any Rules of Court for the time being in force, and have and exercise the same power of making Rules of Court as is by this section vested in Her Majesty in Council on the recommendation of the said Judges before the commencement of this Act.

All Rules of Court made in pursuance of this section shall be laid before each House of Parliament within such time and shall be subject to be annulled in such manner as is in this Act provided.

All Rules of Court made in pursuance of this section, if made before the commencement of this Act, shall from and after the commencement of this Act, and if made after the commencement of this Act shall from and after they come into operation, regulate all matters to which they extend, until annulled or altered in pursuance of this section.

The reference to certain Judges in section twenty-seven of the principal Act shall be deemed to refer to the Judges mentioned in this section as the Judges on whose recommendation an order in Council may be made.

So much of this section as is inconsistent with sec. 16 of the App. Jur. Act, 1876, is repealed.

Provision as to Rules of Probate, Divorce, and Admiralty Courts, being Rules of the High Court, in substitution for 36 & 37 Vict. c. 66, s. 70.

18. All Rules and Orders of Court in force at the time of the commencement of this Act in the Court of Probate, the Court for Divorce and Matrimonial Causes, and the Admiralty Court, or in relation to appeals from the Chief Judge in Bankruptcy, or from the Court of Appeal in Chancery in bankruptcy matters, except so far as they are expressly varied by the First Schedule hereto or by Rules of Court made by Order in Council before the commencement of this Act, shall remain and be in force in the High Court of Justice, and in the Court of Appeal respectively until they shall respectively be altered or annulled by any Rules of Court made after the commencement of this Act.

The present Judge of the Probate Court and of the Court for Divorce and Matrimonial Causes shall retain, and the president for the time being of the Probate and Divorce Division of the High Court of Justice shall have, with regard to non-contentious or common form business in the Probate Court, the powers now conferred on the Judge of the Probate Court by the thirtieth section of the twentieth and twenty-first years of Victoria, chapter seventy-seven, and the said Judge shall retain, and the said president shall have, the powers as to the making of rules and regulations conferred by the fifty-third section of the twentieth and twenty-first years of Victoria, chapter eighty-five.

Provision as to criminal procedure, subject to future Rules remaining unaltered,—in substitution for 36 & 37 Vict. c. 66, s. 71.

19. Subject to the first Schedule hereto and any Rules of Court to be made under this Act, the practice and procedure in all criminal causes and matters whatsoever in the High Court of Justice and in the Court of Appeal respectively, including the practice and procedure with respect to Crown cases reserved, shall be the same as the practice and procedure in similar causes and matters before the commencement of this Act.

Provision as

20. Nothing in this Act or in the first Schedule

hereto, or in any Rules of Court to be made under this Act, save as far as relates to the power of the Court for special reasons to allow depositions or affidavits to be read, shall affect the mode of giving evidence by the oral examination of witnesses in trials by jury, or the rules of evidence, or the law relating to jurymen or juries.

Reference to Act not affecting rules of evidence or juries,—in substitution for 36 & 37 Vict. c. 66, s. 72.

21. Save as by the principal Act or this Act, or by any Rules of Court, may be otherwise provided, all forms and methods of procedure which at the commencement of this Act were in force in any of the Courts whose jurisdiction is by the principal Act or this Act transferred to the said High Court and to the said Court of Appeal respectively, under or by virtue of any law, custom, general order, or rules whatsoever, and which are not inconsistent with the principal Act or this Act or with any Rules of Court, may continue to be used and practised, in the said High Court of Justice and the said Court of Appeal respectively, in such and the like cases, and for such and the like purposes, as those to which they would have been applicable in the respective Courts of which the jurisdiction is so transferred, if the principal Act and this Act had not passed.

Provision for saving of existing procedure of Courts when not inconsistent with this Act or Rules of Court,—in substitution for 36 & 37 Vict. c. 66, s. 73.

In cases where no rule of practice is laid down by the new orders, and there is a variance in the old practice of the Chancery and Common Law Courts, that practice is to prevail which is considered by the Court most convenient. (*Newbiggin-by-the-Sea Gas Co.* v. *Armstrong*, 13 Ch. D. 310.)

22. Whereas by section forty-six of the principal Act it is enacted that "any Judge of the said High Court sitting in the exercise of its jurisdiction elsewhere than in a Divisional Court may reserve any case, or any point in a case, for the consideration of a Divisional Court, or may direct any case or point in a case to be argued before a Divisional Court:" Be it hereby enacted, that nothing in the said Act, nor in any rule or order made under the powers thereof or of this Act, shall take away or prejudice the right of any party to any action to have the issues for trial by jury submitted and left by the Judge to the jury before whom the same shall come for trial, with a proper and complete direction to the jury upon the law, and as to the evidence applicable to such issues:

Nothing in principal Act to prejudice right to have issues submitted, &c.

Provided also, that the said right may be enforced either by motion in the High Court of Justice or by

motion in the Court of Appeal founded upon an exception entered upon or annexed to the record.

Regulation of circuits.

23. Her Majesty may at any time after the passing of this Act, and from time to time, by Order in Council, provide in such manner and subject to such regulations as to Her Majesty may seem meet, for all or any of the following matters:

1. For the discontinuance, either temporarily or permanently, wholly or partially, of any existing circuit, and the formation of any new circuit by the union of any counties or parts of counties, or partly in one way and partly in the other, or by the constitution of any county or part of a county to be a circuit by itself; and in particular for the issue of commissions for the discharge of civil and criminal business in the county of Surrey to the Judges appointed to sit for the trial by jury of causes and issues in Middlesex or London or any of them; and,
2. For the appointment of the place or places at which assizes are to be holden on any circuit; and,
3. For altering by such authority and in such manner as may be specified in the Order, the day appointed for holding the assizes at any place on any circuit in any case, where, by reason of the pressure of business or other unforeseen cause, it is expedient to alter the same; and,
4. For the regulation, so far as may be necessary for carrying into effect any Order under this section, of the venue in all cases, civil and criminal, triable on any circuit or elsewhere.

Her Majesty may from time to time, by Order in Council, alter, add to, or amend any Order in Council made in pursuance of this section; and in making any Order under this section may give any directions which it appears to Her Majesty to be desirable to give for the purpose of giving full effect to such Order.

Provided that every Order in Council made under this section shall be laid before each House of Parliament within such time, and shall be subject to be annulled in such manner as is in this Act provided.

Any Order in Council purporting to be made in

pursuance of this section shall have the same effect in all respects as if it were enacted in this Act.

The power hereby given to Her Majesty shall be deemed to be in addition to and not in derogation of any power already vested in Her Majesty in respect of the matters aforesaid; and all enactments in relation to circuits, or the places at which assizes are to be holden, or otherwise in relation to the subject-matter of any Order under this section, shall, so far as such enactments are inconsistent with such Order, be repealed thereby, whether such repeal is thereby expressly made or not; but all enactments relating to the power of Her Majesty to alter the circuits of the Judges, or places at which assizes are to be holden, or the distribution of revising barristers among the circuits, or otherwise enabling or facilitating the carrying the objects of this section into effect, and in force at the time of the passing of the principal Act, shall continue in force, and shall, with the necessary variations, if any, apply, so far as they are applicable, to any alterations in or dealings with circuits, or places at which assizes are to be holden, made or to be made after the passing of this Act, or to any other provisions of any Order made under this section; and if any such Order is made for the issue of commissions for the discharge of civil and criminal business in the county of Surrey as before mentioned in this section, that county shall for the purpose of the application of the said enactments be deemed to be a circuit, and the senior Judge for the time being so commissioned, or such other Judge as may be for the time being designated for that purpose by Order in Council, shall, in the month of July or August in every year, appoint the revising barristers for that county and the cities and boroughs therein.

The expression "assizes" shall in this section be construed to include sessions under any commission of oyer and terminer, or gaol delivery, or any commission in lieu thereof issued under the principal Act.

Additional power as to regulation of practice and procedure by Rules of Court.

24. Where any provisions in respect of the practice or procedure of any Courts the jurisdiction of which is transferred by the principal Act or this Act to the High Court of Justice or the Court of Appeal, are contained in any Act of Parliament, Rules of Court may be made for modifying such provisions to any extent that may be deemed necessary for adapting the

same to the High Court of Justice and the Court of Appeal, without prejudice nevertheless to any power of the Lord Chancellor, with the concurrence of the Treasury, to make any Rules with respect to the Paymaster General, or otherwise.

Any provisions relating to the payment, transfer, or deposit into, or in, or out of any Court of any money or property, or to the dealing therewith, shall, for the purposes of this section, be deemed to be provisions relating to practice and procedure.

The Lord Chancellor, with the concurrence of the Treasury, may from time to time, by order, determine to what accounts and how intituled any such money or property as last aforesaid, whether paid, transferred, or deposited before or after the commencement of this Act, is to be carried, and modify all or any forms relating to such accounts; and the Governor and Company of the Bank of England, and all other companies, bodies corporate, and persons, shall make such entries and alterations in their books as may be directed by the Lord Chancellor, with the concurrence of the Treasury, for the purpose of carrying into effect any such order.

Orders and Rules to be laid before Parliament, and may be annulled on address from either House.

25. Every Order in Council and Rule of Court required by this Act to be laid before each House of Parliament shall be so laid within forty days next after it is made, if Parliament is then sitting, or if not, within forty days after the commencement of the then next ensuing session; and if an address is presented to Her Majesty by either House of Parliament, within the next subsequent forty days on which the said House shall have sat, praying that any such Rule or Order may be annulled, Her Majesty may thereupon by order in Council annul the same; and the Rule or Order so annulled shall thenceforth become void and of no effect, but without prejudice to the validity of any proceedings which may in the meantime have been taken under the same.

This section shall come into operation immediately on the passing of this Act.

Fixing and collection of fees in High Court and Court of Appeal.

26. The Lord Chancellor, with the advice and consent of the Judges of the Supreme Court, or any three of them, and with the concurrence of the Treasury, may, either before or after the commencement of this Act, by order, fix the fees and per-centages (includ-

ing the per-centage on estates of lunatics) to be taken in the High Court of Justice or in the Court of Appeal, or in any Court created by any commission or in any office which is connected with any of those Courts, or in which any business connected with any of those Courts is conducted, or by any officer paid wholly or partly out of public moneys who is attached to any of those Courts or the Supreme Court, or any Judge of those Courts, including the masters and other officers in lunacy, and may from time to time by order increase, reduce, or abolish all or any of such fees and per-centages and appoint new fees and per-centages to be taken in the said Courts or offices or any of them, or by any such officer as aforesaid.

Any order made in pursuance of this section shall be binding on all the Courts, offices, and officers to which it refers, in the same manner as if it had been enacted by Parliament.

All such fees and per-centages shall (save as otherwise directed by the order) be paid into the receipt of Her Majesty's Exchequer and be carried to the Consolidated Fund, and with respect thereto the following rules shall be observed :

(1.) The fees and per-centages shall, except so far as the order may otherwise direct, be taken by stamps, and if not taken by stamps shall be taken, applied, accounted for, and paid over in such manner as may be directed by the order.

(2.) Such stamps shall be impressed or adhesive, as the Treasury from time to time direct.

(3.) The Treasury, with the concurrence of the Lord Chancellor, may from time to time make such rules as may seem fit for publishing the amount of the fees and regulating the use of such stamps, and particularly for prescribing the application thereof to documents from time to time in use or required to be used for the purposes of such stamps, and for insuring the proper cancellation of stamps and for keeping accounts of such stamps.

(4.) Any document which ought to bear a stamp in pursuance of this Act, or any rule or order made thereunder, shall not be received, filed, used, or admitted in evidence unless and until it is properly stamped, within the time prescribed by the rules under this section regulating the use of stamps, but if any

such document is through mistake or inadvertence received, filed, or used without being properly stamped, the Lord Chancellor or the Court may, if he or it shall think fit, order that the same be stamped as in such order may be directed.

(5.) The Commissioners of Inland Revenue shall keep such separate accounts of all money received in respect of stamps under this Act as the Treasury may from time to time direct, and, subject to the deduction of any expenses incurred by those Commissioners in the execution of this section, the money so received shall, under the direction of the Treasury, be carried to and form part of the Consolidated Fund.

(6.) Any person who forges or counterfeits any such stamp, or uses any such stamp, knowing the same to be forged or counterfeit, or to have been previously cancelled or used, shall be guilty of forgery, and be liable on conviction to penal servitude for a term not exceeding seven years, or to imprisonment with or without hard labour for a term not exceeding two years.

An order under this section may abolish any existing fees and per-centages which may be taken in the said Courts or offices, or any of them, or by the said officers or any of them, but, subject to the provisions of any order made in pursuance of this section, the existing fees and per-centages shall continue to be taken, applied, and accounted for in the existing manner.

27. Section twenty-seven, which refers to salaries of officers of Courts at Lancaster and Durham, is here omitted.

Annual account of fees and expenditure.

28. The Treasury shall cause to be prepared annually an account for the year ending the thirty-first day of March, showing the receipts and expenditure during the preceding year in respect of the High Court of Justice and the Court of Appeal, and of any Court, office, or officer, the fees taken in which or by whom can be fixed in pursuance of this Act.

Such account shall be made out in such form and contain such particulars as the Treasury, with the

concurrence of the Lord Chancellor, may from time to time direct.

Every officer by whom or in whose office fees are taken which can be fixed in pursuance of this Act, shall make such returns and give such information as the Treasury may from time to time require for the purpose of enabling them to make out the said account.

The said account shall be laid before both Houses of Parliament within one month after the thirty-first day of March in each year, if Parliament is then sitting, or if not, then within one month after the next meeting of Parliament.

29. Section twenty-nine, which refers to certain payments made to the senior puisne Judge of the Queen's Bench, and Queen's Coroner, is omitted.

Amendment of 35 & 36 Vict. c. 44, as to the transfer of Government securities to and from the Paymaster General on behalf of the Court of Chancery and the National Debt Commissioners.

30. Whereas by section sixteen of "The Court of Chancery Funds Act, 1872," it is enacted that an order of the Court of Chancery may direct securities standing to the account of the Paymaster General on behalf of the Court of Chancery to be converted into cash, and that where such order refers to Government securities such securities shall be transferred to the Commissioners for the Reduction of the National Debt in manner therein mentioned:

And whereas the said section contains no provision for the converse cases of the conversion of cash into securities and the transfer of securities from the said Commissioners to the account of the Paymaster General on behalf of the Court of Chancery:

And whereas such conversion and transfer, and the other matters provided by the said section, can be more conveniently provided for by rules made in pursuance of section eighteen of the said Act; and it is expedient to remove doubts with respect to the power to provide by such rules for the investment in securities of money in Court, and the conversion into money of securities in Court:

Be it therefore enacted as follows:

Section sixteen of "The Court of Chancery Funds Act, 1872," is hereby repealed.

Rules may from time to time be made in pursuance of section eighteen of "The Court of Chancery Funds Act, 1872," with respect to the investment in securities of money in Court, and the conversion into money of

securities in Court, and with respect to the transfer to the Commissioners for the Reduction of the National Debt of Government securities ordered by the Court to be sold or converted into cash, and to the transfer by those Commissioners to the Paymaster General for the time being, on behalf of the Court of Chancery, of Government securities ordered by the Court of Chancery to be purchased.

This section shall come into operation on the passing of this Act, and shall be construed together with "The Court of Chancery Funds Act, 1872," and shall be subject to any alteration in that Act made by or in pursuance of the principal Act or this Act.

31. This section, which refers to the abolition of secretary to the visitors of lunatics, is omitted.

Amendment of 32 & 33 Vict. c. 83, s. 19, and 32 & 33 Vict. c. 71, s. 116, as to payment of unclaimed dividends to persons entitled.

32. Whereas by section nineteen of "The Bankruptcy Repeal and Insolvent Court Act, 1869," it is enacted as follows: "All dividends declared in any Court acting under the Acts relating to bankruptcy or the relief of insolvent debtors which remain unclaimed for five years after the commencement of this Act, if declared before that commencement, and for five years after the declaration of the dividends if declared after the commencement of this Act, and all undivided surpluses of estates administered under the jurisdiction of such Court which remain undivided for five years after the declaration of a final dividend in the case of bankruptcy, or for five years after the close of an insolvency under this Act, shall be deemed vested in the Crown, and shall be disposed of as the Commissioners of Her Majesty's Treasury direct; provided that at any time after such vesting the Lord Chancellor may, if he thinks fit, by reason of the disability or absence beyond seas of the person entitled to the sum so vested, or for any other reason appearing to him sufficient, direct that the sum so vested shall be repaid out of moneys provided by Parliament, and shall be distributed as it would have been if there had been no such vesting;"

And whereas a similar enactment with respect to unclaimed dividends in bankruptcy was made by section one hundred and sixteen of "The Bankruptcy Act, 1869:"

32 & 33 Vict. c. 71.

And whereas it is expedient to give to persons entitled to any such unclaimed dividends or other sums

greater facilities for obtaining the same: Be it therefore enacted as follows:

Any Court having jurisdiction in the matter of any bankruptcy or insolvency, upon being satisfied that any person claiming is entitled to any dividend or other payment out of the moneys vested in the Crown in pursuance of section nineteen of "The Bankruptcy Repeal and Insolvent Court Act, 1869," or of section one hundred and sixteen of "The Bankruptcy Act, 1869," may order payment of the same in like manner as it might have done if the same had not by reason of the expiration of five years become vested in the Crown in pursuance of the said sections. 32 & 33 Vict. cc. 83, 71.

This section shall take effect as from the passing of this Act.

33. From and after the commencement of this Act there shall be repealed— Repeal.

(1.) The Acts specified in the Second Schedule to this Act, to the extent in the third column of that schedule mentioned, without prejudice to anything done or suffered before the said commencement under the enactments hereby repealed; also,

(2.) Any other enactment inconsistent with this Act or the principal Act.

34, 35. These sections, which refer to Officers and Salaries, are omitted.

APPELLATE JURISDICTION ACT, 1876.

39 & 40 VICT. c. 59.

An Act for amending the Law in respect of the Appellate Jurisdiction of the House of Lords; and for other purposes.

[11th August, 1876.]

BE it enacted by the Queen's most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows:

Preliminary.

Short title.

1. This Act may be cited for all purposes as "The Appellate Jurisdiction Act, 1876."

Commencement of Act

2. This Act shall, except where it is otherwise expressly provided, come into operation on the first day of November one thousand eight hundred and seventy-six, which day is hereinafter referred to as the commencement of this Act.

Appeal.

Cases in which appeal lies to House of Lords.

3. Subject as in this Act mentioned an appeal shall lie to the House of Lords, from any order or judgment of any of the Courts following; that is to say,

(1.) Of Her Majesty's Court of Appeal in England; and

(2.) Of any Court in Scotland from which error or an appeal at or immediately before the commencement of this Act lay to the House of Lords by common law or by statute; and

(3.) Of any Court in Ireland from which error or an appeal at or immediately before the commencement of this Act lay to the House of Lords by common law or by statute.

Form of appeal to House of Lords.

4. Every appeal shall be brought by way of petition to the House of Lords, praying that the matter of the order or judgment appealed against may be reviewed before Her Majesty the Queen in her Court of Parliament, in order that the said Court may determine what of right, and according to the law and custom of this realm, ought to be done in the subject-matter of such appeal.

Attendance of certain number of Lords of Appeal required at hearing and determination of appeals.

5. An appeal shall not be heard and determined by the House of Lords unless there are present at such hearing and determination not less than three of the following persons, in this Act designated Lords of Appeal; that is to say,

(1.) The Lord Chancellor of Great Britain for the time being; and

(2.) The Lords of Appeal in Ordinary to be appointed as in this Act mentioned; and

(3.) Such Peers of Parliament as are for the time being holding or have held any of the offices in this Act described as high judicial offices.

Appointment of Lords of Appeal in Ordinary by Her Majesty.

6. For the purpose of aiding the House of Lords in the hearing and determination of appeals, Her Majesty may, at any time after the passing of this Act, by letters patent appoint two qualified persons to be Lords of Appeal in Ordinary, but such appointment shall not take effect until the commencement of this Act.

A person shall not be qualified to be appointed by Her Majesty a Lord of Appeal in Ordinary unless he has been at or before the time of his appointment the holder for a period of not less than two years of some one or more of the offices in this Act described as high judicial offices, or has been at or before such time as aforesaid, for not less than fifteen years, a practising barrister in England or Ireland, or a practising advocate in Scotland.

Every Lord of Appeal in Ordinary shall hold his office during good behaviour, and shall continue to hold the same notwithstanding the demise of the

Crown, but he may be removed from such office on the address of both Houses of Parliament.

There shall be paid to every Lord of Appeal in Ordinary a salary of six thousand pounds a year.

Every Lord of Appeal in Ordinary, unless he is otherwise entitled to sit as a member of the House of Lords, shall by virtue and according to the date of his appointment be entitled during his life to rank as a Baron by such style as Her Majesty may be pleased to appoint, and shall during the time that he continues in his office as a Lord of Appeal in Ordinary, and no longer, be entitled to a writ of summons to attend, and to sit and vote in the House of Lords; his dignity as a Lord of Parliament shall not descend to his heirs.

On any Lord of Appeal in Ordinary vacating his office, by death, resignation, or otherwise, Her Majesty may fill up the vacancy by the appointment of another qualified person.

A Lord of Appeal in Ordinary shall, if a Privy Councillor, be a member of the Judicial Committee of the Privy Council, and, subject to the due performance by a Lord of Appeal in Ordinary of his duties as to the hearing and determining of appeals in the House of Lords, it shall be his duty, being a Privy Councillor, to sit and act as a member of the Judicial Committee of the Privy Council.

Supplemental Provisions.

Pension of Lord of Appeal in ordinary.

7. Her Majesty may by letters patent grant to any Lord of Appeal in Ordinary, who has served for fifteen years, or is disabled by permanent infirmity from the performance of the duties of his office, a pension by way of annuity to be continued during his life equal in amount to the pension which might under similar circumstances be granted to the Master of the Rolls, in pursuance of the Supreme Court of Judicature Act, 1873.

Previous service in any office described in this Act as a high judicial office shall for the purposes of pension be deemed equivalent to service in the office of a Lord of Appeal in Ordinary under this Act.

The salary and pension payable to a Lord of Appeal in Ordinary shall be charged on and paid out of the Consolidated Fund of the United Kingdom, and shall accrue due from day to day, and shall be payable to the person entitled thereto, or to his executors and

administrators, at such intervals in every year, not being longer than three months, as the Treasury may from time to time determine.

Hearing and determination of appeals during prorogation of Parliament.

8. For preventing delay in the administration of justice, the House of Lords may sit and act for the purpose of hearing and determining appeals, and also for the purpose of Lords of Appeal in Ordinary taking their seats and the oaths, during any prorogation of Parliament, at such time and in such manner as may be appointed by order of the House of Lords made during the preceding session of Parliament; and all orders and proceedings of the said House in relation to appeals and matters connected therewith during such prorogation, shall be as valid as if Parliament had been then sitting, but no business other than the hearing and determination of appeals and the matters connected therewith, and Lords of Appeal in Ordinary taking their seats and the oaths as aforesaid, shall be transacted by such House during such prorogation.

Any order of the House of Lords may for the purposes of this Act be made at any time after the passing of this Act.

Hearing and determination of appeals during dissolution of Parliament.

9. If on the occasion of a dissolution of Parliament Her Majesty is graciously pleased to think that it would be expedient, with a view to prevent delay in the administration of justice, to provide for the hearing and determination of appeals during such dissolution, it shall be lawful for Her Majesty, by writing under her sign manual, to authorize the Lords of Appeal in the name of the House of Lords to hear and determine appeals during the dissolution of Parliament, and for that purpose to sit in the House of Lords at such times as may be thought expedient; and upon such authority as aforesaid being given by Her Majesty, the Lords of Appeal may, during such dissolution, hear and determine appeals and act in all matters in relation thereto in the same manner in all respects as if their sittings were a continuation of the sittings of the House of Lords, and may in the name of the House of Lords exercise the jurisdiction of the House of Lords accordingly.

Saving as to fiat of Attorney-General.

10. An appeal shall not be entertained by the House of Lords without the consent of the Attorney-General or other law officer of the Crown in any case where proceedings in error or on appeal could not

hitherto have been had in the House of Lords without the fiat or consent of such officer.

Procedure under Act to supersede all other proceedure.

11. After the commencement of this Act error shall not lie to the House of Lords, and an appeal shall not lie from any of the Courts from which an appeal to the House of Lords is given by this Act, except in manner provided by this Act, and subject to such conditions as to the value of the subject-matter in dispute, and as to giving security for costs, and as to the time within which the appeal shall be brought, and generally as to all matters of practice and procedure, or otherwise, as may be imposed by orders of the House of Lords.

Certain cases excluded from appeal.

12. Except in so far as may be authorised by orders of the House of Lords an appeal shall not lie to the House of Lords from any Court in Scotland or Ireland in any case, which according to the law or practice hitherto in use, could not have been reviewed by that House, either in error or on appeal.

Provision as to pending business.

13. Nothing in this Act contained shall affect the jurisdiction of the House of Lords in respect of any error or appeal pending therein at the time of the commencement of this Act, and any such error or appeal may be heard and determined, and all proceedings in relation thereto may be conducted, in the same manner in all respects as if this Act had not passed.

Amendment of Acts.

Amendment of the Act of 34 & 35 Vict. c. 91, relating to the constitution of the Privy Council.

14. Whereas by the Act of the session of the thirty-fourth and thirty-fifth years of the reign of Her present Majesty, chapter ninety-one, intituled "An Act to make further provision for the despatch of business by the Judicial Committee of the Privy Council," Her Majesty was empowered to appoint and did appoint four persons qualified as in that Act mentioned to act as members of the Judicial Committee of the Privy Council at such salaries as are in the said Act mentioned, in this Act referred to as paid Judges of the Judicial Committee of the Privy Council;

And whereas the power given by the said Act of filling any vacancies occasioned by death, or otherwise, in the offices of the persons so appointed, has lapsed by efflux of time, and Her Majesty has no power to fill any such vacancies:

Be it enacted, that whenever any two of the paid Judges of the Judicial Committee of the Privy Council have died or resigned, Her Majesty may appoint a third Lord of Appeal in Ordinary in addition to the Lords of Appeal in Ordinary hereinbefore authorised to be appointed, and on the death or resignation of the remaining two paid Judges of the Judicial Committee of the Privy Council Her Majesty may appoint a fourth Lord of Appeal in Ordinary in addition to the Lords of Appeal in Ordinary aforesaid; and may from time to time fill up any vacancies occurring in the offices of such third or fourth Lord of Appeal in Ordinary.

Any Lord of Appeal in Ordinary appointed in pursuance of this section shall be appointed in the same manner, hold his office by the same tenure, be entitled to the same salary and pension, and in all respects be in the same position as if he were a Lord of Appeal in Ordinary appointed in pursuance of the power in this Act before given to Her Majesty.

Her Majesty may by Order in Council, with the advice of the Judicial Committee of Her Majesty's Privy Council or any five of them, of whom the Lord Chancellor shall be one, and of the archbishops and bishops being members of Her Majesty's Privy Council, or any two of them, make rules for the attendance, on the hearing of ecclesiastical cases as assessors of the said Committee of such number of the archbishops and bishops of the Church of England as may be determined by such rules.

The rules may provide for the assessors being appointed for one or more year or years, by rotation or otherwise, and for filling up any temporary or other vacancies in the office of assessor.

Any rule made in pursuance of this section shall be laid before each House of Parliament within forty days after it is made if Parliament be then sitting, or, if not then sitting, within forty days after the commencement of the then next session of Parliament.

If either House of Parliament present an address to Her Majesty within forty days after any such rule has been laid before such House, praying that any such rule may be annulled, Her Majesty may thereupon by Order in Council annul the same, and the rule so annulled shall henceforth become void, but without prejudice nevertheless to the making of any other rule in its place, or to the validity of anything

which may in the meantime have been done under any such rule.

Amendment of the Supreme Court of Judicature Acts in relation to Her Majesty's Court of Appeal.

15. Whereas it is expedient to amend the constitution of Her Majesty's Court of Appeal in manner hereinafter mentioned: Be it enacted, that there shall be repealed so much of the fourth section of "The Supreme Court of Judicature Act, 1875," as provides that the ordinary Judges of Her Majesty's Court of Appeal (in this Act referred to as "the Court of Appeal") shall not exceed three at any one time.

In addition to the number of ordinary Judges of the Court of Appeal authorised to be appointed by "The Supreme Court of Judicature Act, 1875," Her Majesty may appoint three additional ordinary Judges of that Court.

The first three appointments of additional Judges under this Act shall be made by such transfer to the Court of Appeal as is in this section mentioned of three Judges of the High Court of Justice, and the vacancies so created in the High Court of Justice shall not be filled up, except in the event and to the extent hereinafter mentioned.

Her Majesty may by writing, under her sign manual, either before or after the commencement of this Act, but so as not to take effect until the commencement thereof, transfer to the Court of Appeal from the following Divisions of the High Court of Justice, that is to say, the Queen's Bench Division, the Common Pleas Division, and the Exchequer Division, such of the Judges of the said Divisions, not exceeding three in number, as to Her Majesty may seem meet, each of whom shall have been a Judge of any one or more of such Divisions for not less than two years previously to his appointment, and shall not be an ex-officio Judge of the Court of Appeal, and every Judge so transferred shall be deemed an additional ordinary Judge of the Court of Appeal in the same manner as if he had been appointed such Judge by letters patent. No Judge shall be so transferred without his own consent.

Every additional ordinary Judge of the said Court of Appeal appointed in pursuance of this Act shall be subject to the provisions of sections twenty-nine and thirty-seven of "The Supreme Court of Judicature Act, 1873," and shall be under an obligation to go

circuits and to act as Commissioner under commissions of assize or other commissions authorised to be issued in pursuance of the said Act, in the same manner in all respects as if he were a Judge of the High Court of Justice.

There shall be paid to every additional ordinary Judge appointed in pursuance of this Act, in addition to the salary which he would otherwise receive as an ordinary Judge of the Court of Appeal, such sum on account of his expenses on circuit or under such commission as aforesaid as may be approved by the Treasury upon the recommendation of the Lord Chancellor.

Each of the Judges of the High Court of Justice who is in pursuance of this Act transferred to the Court of Appeal, by writing under the sign manual of Her Majesty, shall retain such officers as are attached to his person as such Judge, and are appointed and removeable by him at his pleasure, in pursuance of "The Supreme Court of Judicature Act, 1873," and the officers so attached shall have the same rank, and hold their offices by the same tenure, and upon the same terms and conditions, and receive the same salaries, and if entitled to pensions be entitled to the same pensions, and shall, as nearly as may be, perform the same duties as if the Judges to whom they are attached had not been transferred to the Court of Appeal.

Subject as aforesaid, the provisions of the Supreme Court of Judicature Acts, 1873 and 1875, for the time being in force in relation to the appointment of ordinary Judges of Her Majesty's Court of Appeal, and to their tenure of office, and to their precedence, and to their salaries and pensions, and to the officers to be attached to such Judges, and all other provisions relating to such ordinary Judges, shall apply to the additional ordinary Judges appointed in pursuance of this section in the same manner as they apply to the other ordinary Judges of the said Court.

For the purpose of a transfer to the Court of Appeal under this section, service as a Judge in a Court whose jurisdiction is transferred to the High Court shall be deemed to have been service as a Judge in any one or more of such Divisions of the High Court as are in this section in that behalf mentioned; and for the purpose of the pension of any person appointed under this Act an additional ordinary Judge of Appeal,

service in the High Court of Justice, or in any Court whose jurisdiction is transferred to the High Court of Justice or to the Court of Appeal, shall be deemed to have been service in the Court of Appeal.

Orders in relation to conduct of business in Her Majesty's Court of Appeal.

16. Orders for constituting and holding Divisional Courts of the Court of Appeal, and for regulating the sittings of the Court of Appeal, and of the Divisional Courts of Appeal, may be made, and when made, in like manner rescinded or altered, by the President of the Court of Appeal, with the concurrence of the ordinary Judges of the Court of Appeal, or any three of them; and so much of section seventeen of "The Supreme Court of Judicature Act, 1875," as relates to the regulation of any matters subject to be regulated by orders under this section, and so much of any Rules of Court as may be inconsistent with any order made under this section, shall be repealed, without prejudice nevertheless to any Rules of Court made in pursuance of the section so repealed, so long as such Rules of Court remain unaffected by orders made in pursuance of this section.

Regulations as to business of High Court of Justice and Divisional Courts of High Court.

17. On and after the first day of December, one thousand eight hundred and seventy-six, every action and proceeding in the High Court of Justice, and all business arising out of the same, except as hereinafter provided, shall, so far as is practicable and convenient, be heard, determined, and disposed of before a single Judge, and all proceedings in an action subsequent to the hearing or trial, and down to and including the final judgment or order, except as aforesaid, and always excepting any proceedings on appeal in the Court of Appeal, shall, so far as is practicable and convenient, be had and taken before the Judge before whom the trial or hearing of the cause took place: Provided nevertheless, that Divisional Courts of the High Court of Justice may be held for the transaction of any business which may for the time being be ordered by Rules of Court to be heard by a Divisional Court; and any such Divisional Court when held shall be constituted of two Judges of the Court and no more, unless the President of the Division to which such Divisional Court belongs, with the concurrence of the other Judges of such Division, or a majority thereof, is of opinion that such Divisional Court should be constituted of a greater number of Judges than two, in which case such court may be

constituted of such number of Judges as the President, with such concurrence as aforesaid, may think expedient; nevertheless the decisions of a Divisional Court shall not be invalidated by reason of such Court being constituted of a greater number than two Judges; and

Rules of Court for carrying into effect the enactments contained in this section shall be made on or before the first day of December, one thousand eight hundred and seventy-six, and may be afterwards altered, and all Rules of Court to be made after the passing of this Act, whether made under "The Supreme Court of Judicature Act, 1875," or this Act, shall be made by any three or more of the following persons, of whom the Lord Chancellor shall be one, namely, the Lord Chancellor, the Lord Chief Justice of England, the Master of the Rolls, the Lord Chief Justice of the Common Pleas, the Lord Chief Baron of the Exchequer, and four other Judges of the Supreme Court of Judicature, to be from time to time appointed for the purpose by the Lord Chancellor in writing under his hand, such appointment to continue for such time as shall be specified therein, and all such Rules of Court shall be laid before each House of Parliament within such time and subject to be annulled in such manner as is provided by "The Supreme Court of Judicature Act, 1875."

There shall be repealed on and after the first day of December one thousand eight hundred and seventy-six so much of sections forty, forty-one, forty-two, forty-three, forty-four, and forty-six of "The Supreme Court of Judicature Act, 1873," as is inconsistent with the provisions of this section.

Power in certain events to fill vacancies occasioned in High Court of Justice by removal of Judges to Court of Appeal.

18. Whenever any two of the said paid Judges of the Judicial Committee or the Privy Council have died or resigned, Her Majesty may, upon an address from both Houses of Parliament, representing that the state of business in the High Court of Justice is such as to require the appointment of an additional Judge, fill up one of the vacancies created by the transfer hereinbefore authorised, by appointing one new Judge of the said High Court in any Division thereof; and on the death or retirement of the remaining two paid Judges of the said Judicial Committee, Her Majesty may, upon the like address, fill up in like manner another of the said vacancies,

and from time to time fill up any vacancies occurring in the offices of Judges so appointed.

Attendance of Judges of High Court of Justice on Court of Appeal.

19. Where a Judge of the High Court of Justice has been requested to attend as an additional Judge at the sittings of the Court of Appeal under section four of "The Supreme Court of Judicature Act, 1873," such Judge shall, although the period has expired during which his attendance was requested, attend the sittings of the Court of Appeal for the purpose of giving judgment or otherwise in relation to any case which may have been heard by the Court of Appeal during his attendance on the Court of Appeal.

Amendment of Judicature Acts as to appeals from High Court of Justice in certain cases.

20. Where by Act of Parliament it is provided that the decision of any Court or Judge the jurisdiction of which Court or Judge is transferred to the High Court of Justice is to be final, an appeal shall not lie in any such case from the decision of the High Court of Justice, or of any Judge thereof, to Her Majesty's Court of Appeal.

Continuation until 1st Jan. 1878 of s. 34, of 38 & 39 Vict. c. 77, as to vacancies in legal offices.

21. Whereas by section thirty-four of "The Supreme Court of Judicature Act, 1875," it is enacted that upon the occurrence of any vacancy in an office coming within the provisions of section seventy-seven of "The Supreme Court of Judicature Act, 1873," the Lord High Chancellor of Great Britain may, with the concurrence of the Treasury, suspend the making any appointment to such office for any period not later than the first day of January one thousand eight hundred and seventy-seven, and may, if it be necessary, make provision in such manner as he thinks fit for the temporary discharge in the meantime of the duties of such office, and it is expedient to extend the said period as hereinafter mentioned: Be it therefore enacted as follows:

The said section shall be construed as if the first day of January one thousand eight hundred and seventy-eight were therein inserted in lieu of the first day of January one thousand eight hundred and seventy-seven.

Appointment of deputy by district registrars.

22. A district registrar of the Supreme Court of Judicature may from time to time, but in each case with the approval of the Lord Chancellor and subject to such regulations as the Lord Chancellor may from

time to time make, appoint a deputy, and all acts authorised or required to be done by, to, or before a district registrar may be done by, to, or before any deputy so appointed: Provided always, that in no case such appointment shall be made for a period exceeding three months. This section shall come into force at the time of the passing of this Act.

Appointment of vice-admiral, judge, and officers of Vice-Admiralty Court.

23. Whereas by "The Vice-Admiralty Courts Act, 1863," it is enacted that "nothing in this Act contained shall be taken to affect the power of the "Admiralty to appoint any vice-admiral, or any judge, "registrar, marshal, or other officer of any Vice-"Admiralty Court, as heretofore, by warrant from "the Admiralty, and by letters patent issued under "the seal of the High Court of Admiralty of "England:"

And whereas since the commencement of the Supreme Court of Judicature Acts, 1873 and 1875, doubts have arisen with respect to the exercise of the said power of the Admiralty, and it is expedient to remove such doubts: Be it therefore enacted as follows:

Any power of the Admiralty to appoint or cancel the appointment of a vice-admiral, or a judge, registrar, marshal, or other officer of a Vice-Admiralty Court, may, after the passing of this Act, be exercised by some writing under the hands of the Admiralty, and the seal of the office of Admiralty, and in such form as the Admiralty from time to time direct.

Every appointment so made shall have the same effect, and every vice-admiral, judge, registrar, marshal, and other officer so appointed shall have the same jurisdiction, power, and authority, and be subject to the same obligation, as if he had been appointed before the commencement of the Supreme Court of Judicature Acts, 1873 and 1875, under the seal of the High Court of Admiralty of England.

"Admiralty" in this section means the Lord High Admiral, or the Commissioners for executing his office, or any two of such Commissioners.

Repeal and Definitions.

Repeal of certain sections of the Church Discipline Act, and of the

24. Section sixteen of the Act for better enforcing Church Discipline, passed in the session of the third and fourth years of the reign of Her present Majesty, chapter eighty-six, and sections twenty, twenty-one,

and fifty-five of the Supreme Court of Judicature Act, 1873, and section two of the Supreme Court of Judicature Act, 1875, shall be repealed (with the exception of so much of section two as declares the day on which that Act is to commence). Supreme Court of Judicature Acts.

25. In this Act, if not inconsistent with the context, the following expressions have the meaning hereinafter respectively assigned to them; that is to say, Definitions:

"High judicial office" means any of the following offices; that is to say, "high judicial office:"

The office of Lord Chancellor of Great Britain or Ireland, or of paid Judge of the Judicial Committee of the Privy Council, or of Judge of one of Her Majesty's Superior Courts of Great Britain and Ireland:

"Superior Courts of Great Britain and Ireland" means and includes,— "superior courts:"

As to England, Her Majesty's High Court of Justice and Her Majesty's Court of Appeal, and the Superior Courts of Law and Equity in England, as they existed before the constitution of Her Majesty's High Court of Justice; and

As to Ireland, the Superior Courts of Law and Equity at Dublin; and

As to Scotland, the Court of Session:

"Error" includes a writ of error or any proceedings in or by way of error. "error."

JUDICATURE ACT, 1877.

40 & 41 VICT. c. 9.

This Act authorised Her Majesty to appoint an additional Judge and regulated his position. It also gave a definition of puisne Judge and fixed the titles of the Lords Justices of Appeal and Justices of the High Court.

JUDICATURE ACT, 1878.

41 & 42 VICT. c. 35.

Substituted 1st January, 1880, for 1st January, 1877, in sec. 34 of the Act of 1875.

JUDICATURE ACT, 1879.

42 & 43 VICT. c. 78.

This Act is to be construed as one with the Acts of 1873, 1874, and 1877, and may be cited together as Supreme Court of Judicature Acts, 1873 to 1879. It regulates the offices and officers of the Royal Courts of Justice.

RULES OF COURT.

1875 TO MAY 1880.

[NOTE.—*Where no other provision is made by the Act or these Rules the present procedure and practice remain in force.*]

ORDER I.

FORM AND COMMENCEMENT OF ACTION.

Action, what is.

1. All actions which have hitherto been commenced by writ in the Superior Courts of Common Law at Westminster, or in the Court of Common Pleas at Lancaster, or in the Court of Pleas at Durham, and all suits which have hitherto been commenced by bill or information in the High Court of Chancery, or by a cause in rem or in personam in the High Court of Admiralty, or by citation or otherwise in the Court of Probate, shall be instituted in the High Court of Justice by a proceeding to be called an action.

(*a*) Criminal proceedings.

(*b*) Proceedings on the Crown side of the Queen's Bench Division.

(*c*) Proceedings on the Revenue side of the Exchequer Division, and

(*d*) Proceedings for Divorce, and other Matrimonial Causes, are excepted from these rules, save as afterwards appears by Order LXII., *post.*

Divorce and Matrimonial Causes are regulated by rules of that Division, 26th Dec. 1865.

Interpleader.

2. With respect to interpleader, the procedure and practice now used by Courts of Common Law under the Interpleader Acts 1 & 2 Will. 4, c. 58, and 23 & 24 Vict. c. 126, shall apply to all actions and all the Divisions of the High Court of Justice, and the appli-

cation by a defendant shall be made at any time after being served with a writ of summons and before delivering a defence.

A person, harassed by two claims, can protect himself by proceeding under the Interpleader Acts. As sheriffs are particularly liable to such claims, special provisions have been made with regard to them.

Sheriff. Thus, the sheriff may apply for an order, though no action has been commenced against him. (*Green* v. *Brown*, 3 Dowl. 337.) It is not necessary by his affidavit that he should deny collusion, as the 6th sec. does not require it. (*Bond* v. *Woodhall*, 4 Dowl. 351.)

The execution creditor does not adopt the act of the sheriff, by becoming a party to the issue, so as to become liable in trespass for the seizure (*Woollen* v. *Wright*, 1 H. & C. 554), nor is he liable for any damage, caused by a sale, under the Judge's order. (*Walker* v. *Oldring*, Ibid. 621.) The order does not protect the sheriff if he has been guilty of any excess. (*Winter* v. *Bartholomew*, 11 Ex. 764.)

Non-appearance of party. If the claimant does not appear on the hearing of the summons, his claim will be barred, but without costs, as the sheriff takes the proceedings purely for his own benefit. (*Jones* v. *Lewis*, 8 M. & W., 264; *Glazebrook* v. *Pickford*, 10 M. & W. 279; *Cox*

Costs. v. *Fenn*, 7 Dowl. 50; *Ford* v. *Dilly*, 5 B. & Ad. 885.) If the sheriff's application be unnecessary, he will be made to pay the costs. (*Sheriff of Oxford*, 6 Dowl. 136.) Where neither party appeared, the sheriff was ordered to sell so much as would pay his expenses, and abandon the rest. (*Eveleigh* v. *Salsbury*, 31 Bing. N. C. 298.)

If the plaintiff suffers an interpleader order to be discharged for want of prosecution, he will be obliged to pay the costs. (*Wicks* v. *Wood*, 26 W. R. 680.) Where a plaintiff had failed to comply with an order to specify the goods he claimed, he was held liable to the costs of the trial when he only succeeded as to some. (*Plummer* v. *Price*, 26 W. R. 682.)

The Court has made an order that the sheriff should remain in possession pending the report of the Master, and that the unsuccessful party should pay his costs. (*Clarke* v. *Chetwode*, 4 Dowl. 635.)

If the Court order a sale, the sheriff will be allowed to deduct the expenses, though the seizure was wrongful. (*Bland* v. *Delano*, 6 Dowl. 293.) Where, after the order was made, the plaintiff consented to a sale, and finally withdrew his claim, he was ordered to pay the expenses of the sale and possession money from the date of the order till the sale. (*Davis* v. *Humphreys*, 1 Bing. N. C. 411.)

When not entitled. The sheriff should be in possession of the matter in dispute, so as to be able to obey any order the Court may make. (*Holton* v. *Guntrip*, 3 M. & W. 145; *Ireland* v. *Bushell*, 5 Dowl. 147.) He may be disentitled to interplead in some cases, as if he himself be the execution creditor or his partner (*Ostler* v. *Bower*, 4 Dowl. 605); or where he has been guilty of unreasonable delay (*Mutton* v. *Young*, 4 C. B. 371; *Brackenbury* v. *Laurie*, 3 Dowl. 181); or has already exercised a discretion (*Crump* v. *Day*, 4 C. B. 761); or where, being also attorney for the other side, he defeated execution by giving them notice of it (*Cox* v. *Balne*, 2 D. & L. 718).

Pending an interpleader issue, the execution creditor has no right to the immediate return of the writ, even though the sheriff may have acted improperly. (*Angell* v. *Baddeley*, 3 Ex. D. 49.)

Court of Bankruptcy.

The Court of Bankruptcy has jurisdiction to direct an interpleader issue. (*Re Buck*, 48 L. J. Bank. 33.)

Appeal.

When an interpleader issue is ancillary to the determination of the original action, the order made on it is interlocutory. (*M'Andrew* v. *Barker*, 7 Ch. D. 701.)

If a Judge at Chambers decide the merits in a summary way, under sec. 14 of the C. P. L. 1860, he cannot give a right of appeal, even by the consent of the parties. (*Dodds* v. *Shepherd*, 1 Ex. D. 75.)

An appeal will lie to the Court of Appeal, from a judgment at the trial of the issue. (*Witt* v. *Parker*, 46 L. J. 450.)

Subjoined are the sections of the various statutes referred to.

1 & 2 Will. IV. c. 58.

An Act to enable Courts of Law to give Relief against adverse Claims made upon Persons having no Interest in the Subject of such Claims. [20*th October*, 1831.]

Whereas it often happens that a person sued at law for the recovery of money or goods wherein he has no interest, and which are also claimed of him by some third party, has no means of relieving himself from such adverse claims but by a suit in equity against the plaintiff and such third party, usually called a bill of interpleader, which is attended with expense and delay; for remedy thereof be it enacted by the King's most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, That upon application made by or on the behalf of any defendant sued in any of His Majesty's Courts of Law at Westminster, or in the Court of Common Pleas of the County Palatine of Lancaster, or the Court of Pleas of the County Palatine of Durham, in any action of assumpsit, debt, detinue, or trover, such application being made after declaration, and before plea, by affidavit or otherwise, showing that such defendant does not claim any interest in the subject-matter of the suit, but that the right thereto is claimed or supposed to belong to some third party who has sued or is expected to sue for the same, and that such defendant does not in any manner collude with such third party, but is ready to bring into Court or to pay or dispose of the subject-matter of the action in such manner as the Court (or any Judge thereof) may order or direct, it shall be lawful for the Court, or any Judge thereof, to make rules and orders calling upon such third party to appear and to state the nature and particulars of his claim, and maintain or relinquish his claim, and upon such rule or order to hear the allegations as well of such third party as of the plaintiff, and in the meantime to stay the proceedings in such action, and finally to order such third party to make himself defendant in the same or some other action, or to proceed to trial on one or more feigned issue or issues, and also to direct which of the parties shall be plaintiff or defendant, on such trial, or, with the consent of the plaintiff and such third party, their counsel and attorneys, to dispose of the merits of their claims and determine the same in a summary manner, and to make such other rules and orders

Upon application by a defendant in an action of assumpsit, &c. stating that the right in the subject-matter is in a third party, the Court may order such third party to appear and maintain or relinquish his claim, and in the meantime stay proceedings in such action.

therein as to costs and all other matters as may appear to be just and reasonable.

Judgment and decision to be final.

II. And be it further enacted, That the judgment in any such action or issue as may be directed by the Court or Judge, and the decision of the Court or Judge in a summary manner, shall be final and conclusive against the parties, and all persons claiming by, from, or under them.

If such third party shall not appear, &c. the Court may bar his claim against the original defendant.

III. And be it further enacted, That if such third party shall not appear upon such rule or order to maintain or relinquish his claim, being duly served therewith, or shall neglect or refuse to comply with any rule or order to be made after appearance, it shall be lawful for the Court or Judge to declare such third party and all persons claiming by, from, or under him, to be for ever barred from prosecuting his claim against the original defendant, his executors, or administrators; saving nevertheless the right or claim of such third party against the plaintiff; and thereupon to make such Order between such defendant and the Plaintiff, as to costs and other matters, as may appear just and reasonable.

Proviso as to orders made by a single Judge.

IV. Provided always, and be it further enacted, That no order shall be made in pursuance of this Act by a single Judge of the Court of Pleas of the said County Palatine of Durham who shall not also be a Judge of one of the said Courts at Westminster, and that every order to be made in pursuance of this Act by a single Judge not sitting in open Court shall be liable to be rescinded or altered by the Court in like manner as other orders made by a single Judge.

If a Judge thinks the matter more fit for the decision of the Court, he may refer it.

V. Provided also, and be it further enacted, That if upon application to a Judge, in the first instance or in any later stage of the proceedings, he shall think the matter more fit for the decision of the Court, it shall be lawful for him to refer the matter to the Court; and thereupon the Court shall and may hear and dispose of the same in the same manner as if the proceeding had originally commenced by Rule of Court, instead of the order of a Judge.

For relief of sheriffs and other officers in execution of process againstgoods and chattels.

VI. And whereas difficulties sometimes arise in the execution of process against goods and chattels, issued by or under the authority of the said courts, by reason of claims made to such goods and chattels by assignees of bankrupts and other persons not being the parties against whom such process has issued, whereby sheriffs and other officers are exposed to the hazard and expense of actions; and it is reasonable to afford relief and protection in such cases to such sheriffs and other officers; Be it therefore further enacted, That when any such claim shall be made to any goods or chattels taken or intended to be taken in execution under any such process, or to the proceeds or value thereof, it shall and may be lawful to and for the Court from which such process issued, upon application of such sheriff or other officer made before or after the return of such process, and as well before as after any action brought against such sheriff or other officer, to call before them, by Rule of Court, as well the party issuing such process as the party making such claim, and thereupon to exercise, for the adjustment of such claims and the relief and protection of the sheriff or other officer, all or any of the powers and authorities hereinbefore contained, and make such rules and decisions as shall appear to be just, according to the circumstances of the case; and the costs of all such proceedings shall be in the discretion of the Court.

Rules,orders,

VII. And be it further enacted, That all rules, orders, matters,

and decisions to be made and done in pursuance of this Act, except only the affidavits to be filed, may, together with the declaration in the cause (if any), be entered of record, with a note in the margin expressing the true date of such entry, to the end that the same may be evidence in future times, if required, and to secure and enforce the payment of costs directed by any such rule or order: and every such rule or order so entered shall have the force and effect of a judgment, except only as to becoming a charge on any lands, tenements, or hereditaments; and in case any costs shall not be paid within fifteen days after notice of the taxation and amount thereof given to the party ordered to pay the same, his agent or attorney, execution may issue for the same by *fieri facias* or *capias ad satisfaciendum*, adapted to the case, together with the costs of such entry, and of the execution if by *fieri facias;* and such writ and writs may bear teste on the day of issuing the same, whether in term or vacation; and the sheriff or other officer executing any such writ shall be entitled to the same fees, and no more, as upon any similar writ grounded upon a judgment of the Court.

&c. made in pursuance of this Act may be entered of record, and made evidence.

Costs.

Writs.

Sheriffs fees.

VIII. And whereas by a certain Act made and passed in the last session of Parliament, intituled "An Act to improve the Proceedings in Prohibition and on Writs of Mandamus," it was among other things enacted, that it should be lawful for the Court to which application may be made for any such writ of mandamus as is therein in that behalf mentioned, to make rules and orders calling not only upon the person to whom such writ may be required to issue, but also all and every other person having or claiming any right or interest in or to the matter of such writ, to show cause against the issuing of such writ and payment of the costs of the application, and upon the appearance of such other person in compliance with such Rules, or in default of appearance after service thereof, to exercise all such powers and authorities, and make all such rules and orders applicable to the case, as were or might be given or mentioned by or in any Act passed or to be passed during that present session of Parliament for giving relief against adverse claims made upon persons having no interest in the subject of such claims: And whereas no such Act was passed during the then present session of Parliament; Be it therefore enacted, That upon any such application as is in the said Act and hereinbefore mentioned, it shall be lawful for the Court to exercise all such powers and authorities, and make all such rules and orders applicable to the case, as are given or mentioned by or in this present Act.

Upon any application under 1 W. 4, c. 21, and this Act, the Court to exercise such powers and make such rules as are given by or mentioned in this Act.

23 & 24 Vict. c. 126, ss. 12–18.

XII. Where an action has been commenced in respect of a common law claim for the recovery of money or goods, or where goods or chattels have been taken or are intended to be taken in execution under process issued from any one of the Superior Courts, or from the Court of Common Pleas at Lancaster, or the Court of Pleas at Durham, and the defendant in such action, or the sheriff or other officer, has applied for relief under the provisions of an Act made and passed in the session of Parliament held in the first and second year of the reign of His late Majesty King William the Fourth, intituled, "An Act to enable Courts of Law to give relief against adverse claims made upon persons having no interest in the subject of such claims," it shall be lawful for the Court or a Judge to whom such application is made to

Interpleader may be granted, though titles have not a common origin.

1 & 2 W. 4. c. 58.

exercise all the powers and authorities given to them by this Act and the hereinbefore-mentioned Act passed in the session of Parliament held in the first and second years of the reign of His late Majesty King William the Fourth, though the titles of the claimants to the money, goods, or chattels in question, or to the proceeds or value thereof, have not a common origin, but are adverse to and independent of one another.

Court or Judge may direct sale of goods seized in execution.

XIII. When goods or chattels have been seized in execution by a sheriff or other officer under process of the above-mentioned Courts, and some third person claims to be entitled under a bill of sale or otherwise to such goods or chattels, by way of security for a debt, the Court or a Judge may order a sale of the whole or part thereof, upon such terms as to payment of the whole or part of the secured debt, or otherwise, as they or he shall think fit, and may direct the application of the proceeds of such sale in such manner and upon such terms as to such Court or Judge may seem just.

Power to Court or Judge to decide summarily in certain cases.

XIV. Upon the hearing of any rule or order calling upon persons to appear and state the nature and particulars of their claims, it shall be lawful for the Court or Judge, wherever, from the smallness of the amount in dispute or of the value of the goods seized, it shall appear to them or him desirable and right so to do, at the request of either party, to dispose of the merits of the respective claims of such parties, and to determine the same in a summary manner, upon such terms as they or he shall think fit to impose, and to make such other rules and orders therein as to costs and all other matters as may be just.

Special case may be stated where facts undisputed.

XV. In all cases of interpleader proceedings, where the question is one of law, and the facts are not in dispute, the Judge shall be at liberty, at his discretion, to decide the question without directing an action or issue, and, if he shall think it desirable, to order that a special case be stated for the opinion of the Court.

Proceedings on special case in Court below and in error.

XVI. The proceedings upon such case shall, as nearly as may be, be the same as upon a special case stated under "The Common Law Procedure Act, 1852;" and error may be brought upon a judgment upon such case; and the provisions of "The Common Law Procedure Act, 1854," as to bringing error upon a special case, shall apply to the proceedings in error upon a special case under this Act.

Judgment and decision when to be final.

XVII. The judgment in any such action or issue as may be directed by the Court or Judge in any interpleader proceedings, and the decision of the Court or Judge in a summary manner, shall be final and conclusive against the parties, and all persons claiming by, from, or under them.

Rules, orders, &c. made in interpleader proceedings may be entered of record and made evidence.

XVIII. All rules, orders, matters, and decisions to be made and done in interpleader proceedings under this Act (excepting only any affidavits) may, together with the declaration in the cause, if any, be entered of record, with a note in the margin expressing the true date of such entry, to the end that the same may be evidence in future times, if required, and to secure and enforce the payment of costs directed by any such rule or order; and every such rule or order so entered shall have the force and effect of a judgment in the Superior Courts of Common Law.

Other proceedings.

3. All other proceedings in and applications to the High Court may, subject to these Rules, be taken and made in the same manner as they would have been taken and made in any Court in which any pro-

ceeding or application of the like kind could have been taken or made if the Act had not been passed.

As an example of other proceedings. Applications for assignment of an administration bond. In the goods of Cartwright (34 L. T. 72; 24 W. R. 214), or to pay money awarded under an agreement of reference (*Re Phillips & Gill*, 1 Q. B. D. 78), are rules to show cause, and are not moved on notice of motion under LIII. 2.

ORDER II.

Writ of Summons and Procedure, &c.

Action commenced by writ.

1. Every action in the High Court shall be commenced by a writ of summons, which shall be indorsed with a statement of the nature of the claim made, or of the relief or remedy required in the action, and which shall specify the Division of the High Court to which it is intended that the action should be assigned.

Forms of writs and indorsements will be found in Appendix A, *post*.

Prolixity.

2. Any costs occasioned by the use of any more prolix or other forms of writs, and of indorsements thereon, than the forms hereinafter prescribed, shall be borne by the party using the same, unless the Court shall otherwise direct.

The question of prolixity will arise on taxation of costs. R. S. C. (costs), 18, *post*.

Form of.

3. The writ of summons for the commencement of an action shall, except in the cases in which any different form is hereinafter provided, be in Form No. 1 in Part I. of Appendix (A) hereto, with such variations as circumstances may require.

R.S.C. June, 1876.

3*a*. Forms 2 and 3 in Part I. of Appendix A to "The Rules of the Supreme Court" shall be read as if the words "by leave of the Court or a Judge" were not therein.

These words are accordingly omitted in the Forms contained in this work.

Service out of jurisdiction.

4. No writ of summons for service out of the jurisdiction, or of which notice is to be given out of the jurisdiction, shall be issued without the leave of a Court or Judge.

Such leave is not within the jurisdiction of a Master or a District Registrar (LIV., 2*a*). There must be an affidavit in support of the application, and the order will provide for the service of interrogatories if necessary, and also for the issuing of an injunction if it should be applied for *ex parte*. The affidavit should be intituled, "In the matter of the Jud. Acts," as well as in the

action. (*Young* v. *Brassey*, 1 Ch. D. 277.) The plaintiff may then proceed, and sign judgment in default of appearance. (*Bacon* v. *Turner*, 3 Ch. D. 275.) The decision of the Judge, as to whether the service out of the jurisdiction should be allowed, is the subject of an appeal; but the question cannot be raised by statement of defence. (*Preston* v. *Lamont*, 1 Ex. D. 361.) If the defendant be a foreigner, resident out of the jurisdiction, notice of the writ, and not the writ itself, should be served upon him. (*Beddington* v. *Beddington*, 1 P. D. 426; *Padley* v. *Camphausen*, 48 L. J. Ch. 364.)

Form of.

5. A writ of summons to be served out of the jurisdiction, or of which notice is to be given out of the jurisdiction, shall be in Form No. 2 in Part I. of Appendix (A) hereto, with such variations as circumstances may require. Such notice shall be in Form No. 3 in the same part, with such variations as circumstances may require.

This rule applies as well to parties added by amendment, as to the original parties to the action, and the writ must be amended accordingly. (*Keate* v. *Phillips*, W. N. 1878, 186.)

Special procedure under Bills of Exchange Act abolished.

6*a*. Order II., Rule 6, is hereby annulled, and no writ shall hereafter be issued under the Summary Procedure on Bills of Exchange Act, 1855 (18 & 19 Vict. c. 67).

R.S.C. April, 1880, R. 3. Admiralty action.

R.S.C. Dec. 1875.

7*a*. Form A in the Appendix to these Rules shall be substituted for the form referred to in Order II., Rule 7, of "The Rules of the Supreme Court."

Date and teste.

8. Every writ of summons and also every other writ shall bear date on the day on which the same shall be issued, and shall be tested in the name of the Lord Chancellor, or if the office of Lord Chancellor shall be vacant, in the name of the Lord Chief Justice of England.

ORDER III.

Indorsement of Claim.

Before issue.

1. The indorsement of claim shall be made on every writ of summons before it is issued.

Contents and amendment of.

2. In the indorsement required by Order II., Rule 1, it shall not be essential to set forth the precise ground of complaint, or the precise remedy or relief to which the plaintiff considers himself entitled. The plaintiff may by leave of the Court or Judge amend such indorsement so as to extend it to any

other cause of action or any additional remedy or relief.

In addition to the indorsement required by Order II. 1, there is the special indorsement under Rule 6 of this Order, the indorsement of the amount of debt and costs under Rule 7, and the indorsement of a claim for account under Rule 8. The indorsement should have a claim for an injunction, or receiver, when the obtaining of either is a substantial object of the action. (*Colebourne* v. *Colebourne*, 1 Ch. D. 690.) It is safer to get an order to amend, even though the writ has not been served. (1 Charley, 34.) The amendment may be made upon production of the indorsement on the brief. (*Matthias* v. *Matthias*, W. N. 1876, p. 214.)

In *Large* v. *Large*, W. N. 1877, 198, Jessel, M.R., gave leave to amend the statement of claim, and said that an amendment of the indorsement on the writ was unnecessary. But it must be taken, that the variance in that case would have involved no point of substance.

Form of.

3. The indorsement of claim may be to the effect of such of the Forms in Part II. of Appendix (A) hereto as shall be applicable to the case, or if none be found applicable then such other similarly concise form as the nature of the case may require.

Persons in representative capacity.

4. If the plaintiff sues or the defendant or any of the defendants is sued in a representative capacity, the indorsement shall show, in manner appearing by the statement in Appendix (A) hereto, Part II., sec. 8, or by any other statement to the like effect, in what capacity the plaintiff or defendant sues or is sued.

Probate actions.

5. In Probate actions the indorsement shall show whether the plaintiff claims as creditor, executor, administrator, residuary legatee, legatee, next-of-kin, heir-at-law, devisee, or in any and what other character.

Special.

6. In all actions where the plaintiff seeks merely to recover a debt or liquidated demand in money payable by the defendant, with or without interest, arising upon a contract, express or implied, as, for instance, on a bill of exchange, promissory note, cheque, or other simple contract debt, or on a bond or contract under seal for payment of a liquidated amount of money, or on a statute where the sum sought to be recovered is a fixed sum of money or in the nature of a debt, or on a guaranty, whether under seal or not, where the claim against the principal is in respect of such debt or liquidated demand, bill,

cheque, or note, or on a trust, the writ of summons may be specially indorsed with the particulars of the amount sought to be recovered, after giving credit for any payment or set-off.

A writ specially indorsed under this rule will enable the plaintiff to sign final judgment under Order XIII. 3, when the defendant fails to appear, or under Order XIV. 1*a*, where the defendant does appear, but fails to satisfy the Court or a Judge that he has a good defence to the action on the merits; or to disclose facts sufficient to entitle him to defend. There is no definition in the Act of what a special indorsement is; but we take it, that it must be sufficiently precise to identify the cause of action, as the object is to enable the plaintiff to sign judgment without delivering a statement of claim. "The defendant is entitled to have sufficient particulars to enable him to satisfy his mind whether he ought to pay or resist." (*Walker* v. *Hicks*, 3 Q. B. D. 8; and see *Smith* v. *Wilson*, 5 C. P. D. 25.

If the plaintiff credit the defendant with a certain amount on the indorsement of the writ, he should give particulars of the items. (*Godden* v. *Corsten*, 5 C. P. D. 17.)

A special indorsement should show the dates and amounts of the consignments of goods delivered at intervals under a contract. (*Parpaite Frères* v. *Dickenson*, 26 W. R. 479.)

General. 7. Wherever the plaintiff's claim is for a debt or liquidated demand only, the indorsement, beside stating the nature of the claim, shall state the amount claimed for debt, or in respect of such demand, and for costs respectively, and shall further state, that upon payment thereof, within four days after service, or in case of a writ not for service within the jurisdiction within the time allowed for appearance, further proceedings will be stayed. Such statement may be in the form in Appendix (A) hereto, Part II. sec. III. The defendant may, notwithstanding such payment, have the costs taxed, and if more than one-sixth shall be disallowed, the plaintiff's solicitor shall pay the costs of taxation.

The money must be paid into Court to obtain taxation of plaintiff's costs. But plaintiff's attorney may waive the four days' limit by accepting payment without any agreement as to costs. (*Hoole* v. *Earnshaw*, 39 L. T. 410.)

Account. 8. In all cases of ordinary account, as, for instance, in the case of a partnership or executorship or ordinary trust account, where the plaintiff, in the first instance, desires to have an account taken, the writ of summons shall be indorsed with a claim that such account be taken.

See Order XV. and note thereto.

ORDER IV.

Indorsement of Address.

Of plaintiff and solicitor.

1. The solicitor of a plaintiff suing by a solicitor shall indorse upon every writ of summons and notice in lieu of service of a writ of summons the address of the plaintiff, and also his own name or firm and place of business, and also, if his place of business shall be more than three miles from Temple Bar, another proper place, to be called his address for service, which shall not be more than three miles from Temple Bar, where writs, notices, petitions, orders, summonses, warrants, and other documents, proceedings, and written communications may be left for him. And where any such solicitor is only agent of another solicitor, he shall add to his own name or firm and place of business the name or firm and place of business of the principal solicitor.

If a plaintiff sue under Order XVI. 9, on behalf of himself and others, his address is sufficient. (*Leathley* v. *M'Andrew*, 1 Charley, 58.

As to address of defendant appearing in person, see Order XII., Rule 8, *post*.

Plaintiff suing in person.

2. A plaintiff suing in person shall indorse upon every writ of summons and notice in lieu of service of a writ of summons his place of residence and occupation, and also, if his place of residence shall be more than three miles from Temple Bar, another proper place, to be called his address for service, which shall not be more than three miles from Temple Bar, where writs, notices, petitions, orders, summonses, warrants, and other documents, proceedings, and written communications may be left for him.

[*The above two Rules are to apply to all cases in which the writ of summons is issued out of the London office, or out of a district registry where the defendant has the option of entering an appearance either in the district registry or the London office.*]

R.S.C. Feb. 1876. Limitation to London office.

2*a*. Notwithstanding anything to the contrary contained in Order IV. of "The Rules of the Supreme Court," Rules 1 and 2 of such Order shall only apply where the writ of summons is issued out of the London office.

R.S.C. Feb. 1876.

3*a*. Order IV., Rule 3, is hereby annulled, and the following shall stand in lieu thereof:

In all cases where a writ of summons is issued out

of a district registry the solicitor shall give on the writ the address of the plaintiff, and his own name or firm and his place of business, which shall, if his place of business be within the district of the registry, be an address for service, and if such place be not within the district, he shall add an address for service within the district, and, where the defendant does not reside within the district, he shall add a further address for service, which shall not be more than three miles from Temple Bar; and where the solicitor issuing the writ is only agent of another solicitor, he shall add to his own name or firm and place of business the name or firm and place of business of the principal solicitor. Where the plaintiff sues in person, he shall give on the writ his place of residence and occupation, which shall, if his place of residence be within the district, be an address for service, and if such place be not within the district, he shall add an address for service within the district, and, where the defendant does not reside within the district, he shall add a further address for service, which shall not be more than three miles from Temple Bar.

ORDER V.

Issue of Writs of Summons..

1. *Place of Issue.*

Plaintiff may select place.

1. In any action other than a Probate action, the plaintiff wherever resident may issue a writ of summons out of the registry of any district.

R.S.C. April, 1880. Issue of writs of summons out of central office.

1*a*. Every writ of summons not issued out of a district registry shall be issued out of the central office.

Where defendant out of district, place for appearance to be stated.

2. In all cases where a defendant neither resides nor carries on business within the district out of the registry whereof a writ of summons is issued, there shall be a statement on the face of the writ of summons that such defendant may cause an appearance to be entered at his option either at the district registry or the London office, or a statement to the like effect.

As to actions already commenced under Order II. Rule 6., see *Oger* v. *Bradnum*, 1 C. P. D. 334.

3. In all cases where a defendant resides or carries on business within the district, and a writ of summons is issued out of the district registry, there shall be a statement on the face of the writ of summons that the defendant do cause an appearance to be entered at the district registry, or to the like effect. Defendant within district.

2. *Option to choose Division in certain cases.*

4. Subject to the power of transfer, every person by whom any cause or matter may be commenced in the High Court of Justice which would have been within the non-exclusive cognizance of the High Court of Admiralty if the said Act had not passed shall assign such cause or matter to any one of the divisions of the said High Court, including the Probate, Divorce, and Admiralty Division, as he may think fit, by marking the document by which the same is commenced with the name of the Division, and giving notice thereof to the proper officer of the Court. If so marked for the Chancery Division the same shall be assigned to one of the Judges of such Division by marking the same with the name of such of the said Judges as the plaintiff or petitioner (subject to such power of transfer) may think fit.

See also sec. 11 of the Act of 1875.

4*a*. Subject to the power of transfer, and subject also to the power of the Lord Chancellor by order from time to time otherwise to direct, every cause or matter which shall be commenced in the Chancery Division of the High Court shall be assigned to one of the Judges thereof by marking the same with the name of such of the same Judges as the plaintiff or petitioner may in his option think fit. R.S.C. June, 1877. Marking name of Judge.

If, in any action commenced and pending in any one of the Queen's Bench, Common Pleas, or Exchequer Divisions of the High Court, the trial shall take place before a Judge of another of the said Divisions, the cause shall from that time be transferred to the Division of which such Judge is a member. R.S.C. March, 1879. Transfer after trial.

No causes are to be marked with Mr. Justice Fry's name. Cases are transferred to him for the purpose of trial or hearing only.—Order of the Lord Chancellor, 19th June, 1877.

3. *Generally.*

5. Writs of summons shall be prepared by the plaintiff or his solicitor, and shall be written or printed, or partly written and partly printed, on paper of the Directions as to preparation of.

same description as hereby directed in the case of proceedings directed to be printed.

Where a solicitor has commenced an action in the name of a plaintiff without authority, the proper course is, for the plaintiff to serve notice of motion on the defendant, as well as on the solicitor, that the action may be dismissed, and that the solicitor may pay the costs of the plaintiff, as between solicitor and client, and the costs of the defendant as between party and party. (*Newbiggin-by-the-Sea Gas Company* v. *Armstrong*, 13 Ch. D. 310; *Nurse* v. *Durnford*, 13 Ch. D. 764.)

Seal.

6. Every writ of summons shall be sealed by the proper officer, and shall thereupon be deemed to be issued.

Copy to be left.

7. The plaintiff or his solicitor shall, on presenting any writ of summons for sealing, leave with the officer a copy, written or printed, or partly written and partly printed, on paper of the description aforesaid, of such writ, and all the indorsements thereon, and such copy shall be signed by or for the solicitor leaving the same, or by the plaintiff himself if he sues in person.

Copy to be filed and entered in the cause book.

8. The officer receiving such copy shall file the same, and an entry of the filing thereof shall be made in a book to be called the Cause Book, which is to be kept in the manner in which cause books have heretofore been kept by the clerks of records and writs in the Court of Chancery, and the action shall be distinguished by the date of the year, a letter, and a number, in the manner in which causes are now distinguished in such last-mentioned cause books.

R.S.C. June, 1876.

"And when such action shall be commenced in a district registry, it shall be further distinguished by the name of such registry."

Notice of assignment of actions, how given.

9. Notice to the proper officer of the assignment of an action to any Division of the Court under section eleven of "The Supreme Court of Judicature Act, 1875," or under Rule 4 of this order, shall be sufficiently given by leaving with him the copy of the writ of summons.

4. *In particular Actions.*

Probate actions.

10. The issue of a writ of summons in Probate actions shall be preceded by the filing of an affidavit made by the plaintiff or one of the plaintiffs in verification of the indorsement on the writ.

11*a*. The first paragraph of Rule 11 of Order V. of "The Rules of the Supreme Court" is hereby annulled, and the following shall stand in lieu thereof: **Admiralty actions. R.S.C. Feb. 1876.**

"In Admiralty actions *in rem* a warrant for the arrest of property according to the Form A in the Appendix to these Rules may be issued at the instance either of the plaintiff or of the defendant at any time after the writ of summons has issued, but no warrant of arrest shall be issued until an affidavit by the party or his agent has been filed, and the following provisions complied with."

(*a*.) The affidavit shall state the name and description of the party on whose behalf the action is instituted, the nature of the claim, the name and nature of the property to be arrested, and that the claim has not been satisfied. **Contents of affidavit.**

(*b*.) In an action of wages the affidavit shall state the national character of the vessel proceeded against; and if against a foreign vessel, that notice of the institution of the action has been given to the Consul of the State to which the vessel belongs, if there be one resident in London [*a copy of the notice shall be annexed to the affidavit*]. **Action for wages.**

(*c*.) In an action of bottomry, the bottomry bond, and if in a foreign language also a notarial translation thereof, shall be produced for the inspection and perusal of the Registrar, and a copy of the bond, or of the translation thereof, certified to be correct, shall be annexed to the affidavit. **For bottomry.**

(*d*.) In an action of distribution of salvage the affidavit shall state the amount of salvage money awarded or agreed to be accepted, and the name, address, and description of the party holding the same. **Distribution of salvage.**

(*e*.) The Court or Judge may in any case, if he think fit, allow the writ of summons to issue although the affidavit may not contain all the required particulars. In a wages cause he may also waive the service of the notice, and in a cause of bottomry the production of the bond. **Incomplete affidavit, when allowed.**

The Admiralty Division will enforce the judgment of a foreign tribunal of commerce. (*The City of Mecca*, 5 P. D. 28.)

The immunity from arrest of a foreign ship of war, does not extend to a packet conveying mails and cargo, although she may belong to a foreign sovereign. (*The Parlement Belge*, 4 P. D. 129.)

Since the Judicature Acts, the time from which steps in an ordinary default cause *in rem* in the Admiralty Div. may be taken, is the service of the writ and not of the warrant of arrest. (*The Maria*, 39 L. T. 549).

R.S.C. Dec. 1875. 12*a*. Order V., Rule 12, of "The Rules of the Supreme Court," is hereby annulled.

ORDER VI.

Concurrent Writs.

When issued. 1. The plaintiff in any action may, at the time of or at any time during twelve months after the issuing of the original writ of summons, issue one or more concurrent writ or writs, each concurrent writ to bear teste of the same day as the original writ, and to be marked with a seal bearing the word "concurrent," and the date of issuing the concurrent writ; and such seal shall be impressed upon the writ by the proper officer: Provided always, that such concurrent writ or writs shall only be in force for the period during which the original writ in such action shall be in force.

Under this rule, the Court has no power to direct a concurrent writ to be issued, after the expiration of twelve months. (*Cole* v. *Sherard*, 11 Ex. 482.)

A writ cannot be issued, concurrent with one which does not exist; hence where a writ had been renewed and then lost, the Court declared they had no power to order a concurrent writ to be issued. (*Davies* v. *Garland*, 1 Q. B. D. 250, and 33 L. T. 727, more fully reported.)

For renewal of writs, see Order VIII., *post*.

Service within and without the jurisdiction. 2. A writ for service within the jurisdiction may be issued and marked as a concurrent writ with one for service, or whereof notice in lieu of service is to be given, out of the jurisdiction; and a writ for service, or whereof notice in lieu of service is to be given, out of the jurisdiction may be issued and marked as a concurrent writ with one for service within the jurisdiction.

ORDER VII.

Disclosure by Solicitors and Plaintiffs.

Of authority to issue writ. 1. Every solicitor whose name shall be indorsed on any writ of summons shall, on demand in writing made by or on behalf of any defendant who has been served therewith or has appeared thereto, declare forthwith whether such writ has been issued by him or with his authority or privity; and if such solicitor shall declare that the writ was not issued by him or

with his authority or privity, all proceedings upon the same shall be stayed, and no further proceedings shall be taken thereupon without leave of the Court or a Judge.

2. When a writ is sued out by partners in the name of their firm, the plaintiffs or their solicitors shall, on demand in writing by or on behalf of any defendant, declare forthwith the names and places of residence of all the persons constituting the firm. And if the plaintiffs or their solicitor shall fail to comply with such demand, all proceedings in the action may, upon an application for that purpose, be stayed upon such terms as the Court or a Judge may direct. And when the names of the partners are so declared, the action shall proceed in the same manner and the same consequences in all respects shall follow as if they had been named as the plaintiffs in the writ. But all proceedings shall, nevertheless, continue in the name of the firm.

Action by partners.

ORDER VIII.

Renewal of Writ.

1. No original writ of summons shall be in force for more than twelve months from the day of the date thereof, including the day of such date; but if any defendant therein named shall not have been served therewith, the plaintiff may, before the expiration of the twelve months, apply to a Judge, or the District Registrar, for leave to renew the writ; and the Judge or Registrar, if satisfied that reasonable efforts have been made to serve such defendant, or for other good reason, may order that the original or concurrent writ of summons be renewed for six months from the date of such renewal, and so from time to time during the currency of the renewed writ. And the writ shall in such case be renewed by being marked with a seal bearing the date of the day, month, and year of such renewal; such seal to be provided and kept for that purpose at the proper office, and to be impressed upon the writ by the proper officer, upon delivery to him by the plaintiff or his solicitor of a memorandum in Form No. 5 in Appendix (A), Part I.; and a writ of summons so renewed shall remain in force and be available to prevent the operation of any statute whereby the time for the commencement of the action may be limited,

Duration of writ twelve months.

Renewal for six months.

and for all other purposes, from the date of the issuing of the original writ of summons.

It is only the original or concurrent writ that can be renewed. (*Davies* v. *Garland*, 1 Q. B. D. 250.)

A writ may be renewed after the expiration of the twelve months, unless the period allowed by the Statute of Limitations has intervened. (*Re Jones, Eyre* v. *Cocks*, 46 L. J. Ch. 316; *Doyle* v. *Kaufmann*, 3 Q. B. D. 7.) The principle on which the Court of Queen's Bench seem to have acted in this latter case, was, that where a litigant had perfected his title under the Statute, the Court had no power to deprive him of it; and on this point compare the observations of *Jessel*, M. R., in *McAndrew* v. *Barker*, 7 Ch. D. 705, on a somewhat similar principle. It is difficult to see why this principle should not have been applied in *Canadian Oil Works Corp.* v. *Hay*, 38 L. T. 549, where, unless the time for the delivery of the statement of claim were extended, the same result would have followed; but possibly Malins, V.-C., was influenced by the special circumstances of that case.

Evidence of renewal.

2. The production of a writ of summons purporting to be marked with the seal of the Court, showing the same to have been renewed in manner aforesaid, shall be sufficient evidence of its having been so renewed, and of the commencement of the action as of the first date of such renewed writ for all purposes.

ORDER IX.

Service of Writ of Summons.

1. *Mode of Service.*

Agreement to accept

1. No service of writ shall be required when the defendant, by his solicitor, agrees to accept service, and enters an appearance.

A solicitor not entering an appearance in pursuance of a written undertaking, is liable to attachment under Order XII. 14.

Personal.

2. When service is required the writ shall, wherever it is practicable, be served in the manner in which personal service is now made, but if it be made to appear to the Court or to a Judge that the plaintiff is from any cause unable to effect prompt personal service, the Court or Judge may make such order for

Substituted.

substituted or other service, or for the substitution of notice for service, as may seem just.

The method of effecting personal service is to tender a copy of the writ to the defendant, and produce the original if required.

The method of substituted service depends upon the exigencies of the case and the discretion of the Judge. In *Capes* v. *Brewer*, 24 W. R. 40, the writ was left at the place of business of the

defendant, and a copy was posted to him. In *Dymond* v. *Croft*, 45 L. J. 604, the writ was served on the defendant's solicitors, and a copy was sent by post addressed to the defendant. In the case of an absconding defendant leave has been given to serve the writ at his premises, advertisements being at the same time directed to be inserted in the *Gazette* and the *Times*. (*Cook* v. *Dey*, 2 Ch. D. 218; *Crane* v. *Jullion*, 2 Ch D. 220, *Bank of Whitehaven* v. *Thompson*, W. N. 1877, 45.) Where defendant's only known place of residence was a club. (*Rafael* v. *Ongley*, 34 L. T. 124.) In the Probate Court service has been allowed by advertisement only. (*Whitley* v. *Honeywell*, 24 W. R. 851.) Substituted service will not be allowed when the defendant is a Colonial Government (*Sloman* v. *The Government of New Zealand*, 1 C. P. D. 563), or when the defendant is a foreign sovereign, on his ambassador (*Stewart* v. *Bank of England*, W. N. 1876, 263).

Club.

Persons out of jurisdiction.

Where the plaintiff had obtained an order for substituted service, and the action proceeded to judgment against all the defendants, the Court, in the exercise of its discretion, allowed a defendant against whom the order for substituted service had been made to come in and defend the action, as he showed that he had no knowledge of the proceedings, and had a defence on the merits, but the leave being discretionary the Court imposed terms. (*Watt* v. *Barnett*, 3 Q. B. D. 363.

Bona fide defence.

2. *On Particular Defendants.*

3. When husband and wife are both defendants to the action, service on the husband shall be deemed good service on the wife, but the Court or a Judge may order that the wife shall be served with or without service on the husband.

Husband and wife.

4. When an infant is a defendant to the action, service on his or her father or guardian, or if none, then upon the person with whom the infant resides or under whose care he or she is, shall, unless the Court or Judge otherwise orders, be deemed good service on the infant; provided that the Court or Judge may order that service made or to be made on the infant shall be deemed good service.

On infant.

5. When a lunatic or person of unsound mind not so found by inquisition is a defendant to the action, service on the committee of the lunatic, or on the person with whom the person of unsound mind resides or under whose care he or she is, shall, unless the Court or Judge otherwise orders, be deemed good service on such defendant.

On lunatic.

3. *On Partners and other Bodies.*

6. Where partners are sued in the name of their firm, the writ shall be served either upon any one or more of the partners or at the principal place within

On partners.

the jurisdiction of the business of the partnership upon any person having at the time of service the control or management of the partnership business there; and subject to the Rules hereinafter contained, such service shall be deemed good service upon the firm.

R.S.C. June, 1876.

6a. When one person carrying on business in the name of a firm apparently consisting of more than one person shall be sued in the firm name, the writ may be served at the principal place within the jurisdiction of the business so carried on upon any person having at the time of service the control or management of the business there; and, subject to any of the Rules of the Supreme Court, such service shall be deemed good service on the person so sued.

It makes no difference that the person so carrying on business resides out of the jurisdiction. (*O'Neil* v. *Clason*, 46 J. L. 191.)

On a Corporation.

7. Whenever, by any statute, provision is made for service of any writ of summons, bill, petition, or other process upon any corporation, or upon any hundred, or the inhabitants of any place, or any society or fellowship, or any body or number of persons, whether corporate or otherwise, every writ of summons may be served in the manner so provided.

The Statutes referred to in this rule are as follows:—

Means of Service.

Companies chartered under 7 Will. IV. & 1 Vict. c. 73.	On the clerk of the company, or by leaving it at the head office, or, if the clerk shall not be found or known, then, on any agent or officer of the company, or, by leaving it at the usual place of abode of such agent or officer.	7 Will. IV. & 1 Vict. c. lxxiii., s. 26.
Companies incorporated under the Companies Clauses Consolidation Act, 1845.	By sending it through the post to the principal office of the company, or to one of the principal offices where there is more than one, or by giving it personally to the secretary, or, where there is no secretary, by giving it to any one director of the company.	8 & 9 Vict. c. xvi., s. 135.
Companies incorporated under the Lands Clauses Consolidation Act, 1845.	By sending it through the post to the principal office of the promotors, or to one of the principal offices where there is more than one, or by giving it or posting it to the secretary, or the solicitors of the promotors where there is no secretary.	8 & 9 Vict. c. xviii., s. 134.
Companies incorporated under the Railway Clauses Consolidation Act, 1845.	By sending it through the post to the principal office of the company, or to one of the principal offices where there is more than one, or by giving it personally to the secretary, or, where there is no secretary, by giving it to any one of the directors of the company.	8 & 9 Vict. c. xx., s. 138.

By leaving it or sending it through the post in a prepaid letter addressed to the company at their registered office.	25 & 26 Vict. c. lxxxix., s. 62.	Companies incorporated under the Companies Act, 1862.
On the mayor or other head officer, or on the town clerk, clerk, treasurer, or secretary.	15 & 16 Vict. c. lxxvi., s. 16.	Under the C. L. P. Act, 1852, against a corporation aggregate.
On the high constable or any one of the high constables.		Against the inhabitants of a hundred or other like district.
On some peace officer thereof.		Against the inhabitants of any county of any city or town, or the inhabitants of any franchise, liberty, city, town, or place not being part of a hundred or other like district.
On the head officer in England.	*Newby* v. *Van Oppen*, L. R. 7 Q. B. 293.	On the English branch of a foreign corporation (when the cause of action has arisen in England).

The booking-clerk of a Scotch railway has been held not to be a head officer, within the above meaning, although he was the only official at the place of business in England. (*Mackereth* v. *Glasgow and South-Western Railway Company*, 8 Ex. 149.)

4. *In particular Actions.*

Recovery of land.

8. Service of a writ of summons in an action to recover land may, in case of vacant possession, when it cannot otherwise be effected, be made by posting a copy of the writ upon the door of the dwelling-house or other conspicuous part of the property.

A doubt has been suggested, whether judgment can be signed on default of appearance without an order; but this course would not appear to have been followed in *Isaac* v. *Diamond*, W. N. 1880, 75.

R. S. C. Dec. 1875. Admiralty Actions.

9. Order IX., Rule 9, of "The Rules of the Supreme Court," is hereby annulled, and the following shall stand in lieu thereof:

Warrant of arrest.

"In Admiralty actions *in rem* the warrant of arrest shall be served by the Marshal or his substitutes, whether the property to be arrested be situate within the port of London or elsewhere within the jurisdiction of the Court, and the solicitor issuing the warrant shall, within six days from the service thereof, file the same in the registry."

R.S.C. Dec. 1875.

10. Order IX., Rule 10, of "The Rules of the Supreme Court," is hereby annulled, and the following shall stand in lieu thereof:

Admiralty actions. Service of writ.

"In Admiralty actions *in rem*, service of a writ of summons against ship, freight, or cargo on board, is to be effected by nailing or affixing the original writ for a short time on the mainmast, or on the single mast of the vessel, and on taking off the process, leaving a true copy of it nailed or fixed in its place."

Where cargo landed.

11. If the cargo has been landed or transshipped, service of the writ of summons to arrest the cargo and freight shall be effected by placing the writ for a short time on the cargo, and on taking off the process by leaving a true copy upon it.

Where access denied.

12. If the cargo be in the custody of a person who will not permit access to it, service of the writ may be made upon the custodian.

Generally.

Indorsement of service.

13. The person serving a writ of summons shall, within three days at most after such service, indorse on the writ the day of the month and week of the service thereof, otherwise the plaintiff shall not be at liberty, in case of non-appearance, to proceed by default; and every affidavit of service of such writ shall mention the day on which such indorsement was made.

In Admiralty actions *in rem*, an amended writ must be served in the same way as an original writ: if the defendants do not appear, and the ship has in the meantime been sold, and the proceeds paid into Court, the amended writ must be delivered to the registrar with notice that service was intended, and be filed in the registry. In such a case the amended writ must be indorsed with the date of service under this rule. (*The Cassiopeia*, 48 L. J., P. D. 39.)

The clause as to indorsing the date of service on the writ does not apply to cases of substituted service. (*Dymond* v. *Croft*, 3 Ch. D. 512; *Cruse* v. *Kuttingell*, W. N. 1875, 250.)

ORDER X.

Substituted Service.

Affidavit for.

Every application to the Court or a Judge, under Order IX., Rule 2, for an order for substituted or other service, or for the substitution of notice for service, shall be supported by an affidavit setting forth the grounds upon which the application is made.

The application for the order is made by an *ex parte* motion, and must be supported by an affidavit showing what efforts have been made to serve the defendant, that all practicable means of doing so have been exhausted, and how the substituted service is proposed to be effected. ("Daniell's Chancery Practice," 4th ed., vol. i. p. 404.)

An affidavit of service should be filed and produced to the proper officer in order to sign judgment. (*Cruse* v. *Kuttingell*, W. N., 1875, 250.)

ORDER XI.

Service out of the Jurisdiction.

1. Service out of the jurisdiction of a writ of summons or notice of a writ of summons may be allowed by the Court or a Judge whenever the whole or any part of the subject-matter of the action is land or stock, or other property situate within the jurisdiction, or any act, deed, will, or thing affecting such land, stock, or property, and whenever the contract which is sought to be enforced or rescinded, dissolved, annulled, or otherwise affected in any such action, or for the breach whereof damages or other relief are or is demanded in such action, was made or entered into within the jurisdiction, and whenever there has been a breach within the jurisdiction of any contract wheresoever made, and whenever any act or thing sought to be restrained or removed, or for which damages are sought to be recovered, was or is to be done or is situate within the jurisdiction. When allowed.

In the case of a British subject residing abroad, the writ should be served upon him, but in the case of a foreigner notice of the writ, and not the writ itself, should be served upon him. (*Padley* v. *Camphausen*, 10 Ch. D. 550; *The Great Australian Mining Company* v. *Martin*, 25, W. R. 281.) And the same rule will apply to foreign corporations. (*Westman* v. *Aktiebolaget Co.*, 1, Ex. D. 237; *Scott* v. *Royal Wax Candle Company*, 1 Q. B. D. 404; *Bacon* v. *Turner*, 11 Ch. D. 275.)

This rule applies to the service of notices on third parties under Order XVI. Rules 17, 18. (*Swansea Shipping Company* v. *Duncan*, 1 Q. B. D. 644.)

"Within the jurisdiction" means within the territorial jurisdiction; this limit has been defined as "low-water mark." (*Harris* v. *Franconia*, 2 C. P. D. 173; *The Vivar*, 2 P. D. 29; *Re Smith*, 1 P. D. 300.)

A slander of title, made out of the jurisdiction, concerning property within, is not an act or thing within the meaning of this rule, and service in such case was disallowed. (*Casey* v. *Arnott*, 2 C. P. D. 24.)

The objection to such a writ after it has been issued cannot be taken by plea, there must be an application to the Judge to set aside the writ. (*Preston* v. *Lamont*, 1 Ex. D. 861.)

Discretion of Judge.

R.S.C. June, 1876.

1*a*. Whenever any action is brought in respect of any contract which is sought to be enforced or rescinded, dissolved, annulled, or otherwise affected in any such action, or for the breach whereof damages or other relief are or is demanded in such action, when such contract was made or entered into within the jurisdiction, or whenever there has been a breach within the jurisdiction of any contract wherever made, the Judge, in exercising his discretion as to granting leave to serve such writ or notice on a defendant out of his jurisdiction, shall have regard to the amount or value of the property in dispute or sought to be recovered, and to the existence in the place of residence of the defendant, if resident in Scotland or Ireland; of a local Court of limited jurisdiction, having jurisdiction in the matter in question, and to the comparative cost and convenience of proceeding in England or in the place of such defendant's residence, and in all the above-mentioned cases no such leave is to be granted without an affidavit stating the particulars necessary for enabling the Judge to exercise his discretion in manner aforesaid, and all such other particulars (if any) as he may require to be shown.

Affidavit.

This rule was drawn up to meet the dissatisfaction felt in Scotland at the large powers originally given by Rule 1. (See observations on its scope in *Ex parte M'Phail*, 12 Ch. D. 632.)

In Probate actions.

2. In Probate actions service of a writ of summons or notice of a writ of summons may by leave of the Court or Judge be allowed out of the jurisdiction.

Affidavit in support.

3. Every application for an order for leave to serve such writ or notice on a defendant out of the jurisdiction shall be supported by evidence, by affidavit, or otherwise, showing in what place or country such defendant is or probably may be found, and whether such defendant is a British subject or not, and the grounds upon which the application is made.

In *The Great Australian Gold Mining Co.* v. *Martin*, 5 Ch. D. 1, the Court refused to make an order for service out of the jurisdiction, until the plaintiffs produced an affidavit by their secretary, that he was informed and believed there was a good cause of action within the jurisdiction.

Where the affidavit did not disclose all the facts necessary to enable the Judge to estimate the comparative cost and convenience of proceeding in either country; and the writ was set aside on facts disclosed by the defendant, the plaintiff had to pay all the costs of issuing the writ. (*Tottenham* v. *Barry*, 48 L. J. Ch. 641.). The Judge should have information before him as to the comparative convenience of a trial in the one place rather than in the other.

He cannot be said to have this unless he is informed whether or not there is at the place where the defendant resides a local Court which has jurisdiction in the matter. (*Wood* v. *MacInnes*, 27 W. R. 49, 4 C. P. D. 67.) In which case the affidavit was held insufficient, although it disclosed that the contract was made and the breach of it occurred in London, where the plaintiff and the agent of the defendant (who signed the contract) and all the plaintiff's witnesses resided, and where it alleged it would be more convenient and less expensive to try the action.

Time for appearance.

4. Any order giving leave to effect such service or give such notice shall limit a time after such service or notice within which such defendant is to enter an appearance, such time to depend on the place or country where or within which the writ is to be served or the notice given.

This rule applies to third parties brought in under Order XVI. Rules 17, 18. (*Swansea Shipping Co.* v. *Duncan*, 1 Q. B. D. 644.)

Notice in lieu of service.

5. Notice in lieu of service shall be given in the manner in which writs of summons are served.

The form of affidavit of service, formerly used at common law, may now be generally adopted. (*Bustros* v. *Bustros*, 28 W. R. 595; W. N. 1880, 73.)

Writs of summons are served in the manner specified in the note to Rule 2, Order IX., *ante*. The person, therefore, effecting service of notice under this rule, should take the original writ with him, so as to be able to show it if required.

ORDER XII.

APPEARANCE.

In London, when.

1. Except in the cases otherwise provided for by these Rules a defendant shall enter his appearance in London.

The cases otherwise provided for are those mentioned in Order V., Rule 1, *ante*.

In the case of disputed jurisdiction, it is the practice in the Admiralty Division to appear under protest. (*The Vivar*, 2 P. D. 29).

Appearances in central office. R.S.C. April, 1880.

1*a*. Appearances entered in London shall be entered in the central office.

In probate actions notice of appearances entered shall forthwith be given by the central office to the Probate Registry.

In registry, when.

2. If any defendant to a writ issued in a district registry resides or carries on business within the district, he shall appear in the district registry.

The proper way for the plaintiff to avail himself of an irregularity in the appearance, is to sign judgment as in default of appearance. (*Smith* v. *Dobbin*, 3 Ex. D. 338.)

Optional, when.

3. If any defendant neither resides nor carries on business in the district, he may appear either in the district registry or in London.

Action proceeds in Registry, when.

4. If a sole defendant appears, or all the defendants appear in the district registry, or if all the defendants who appear appear in the district registry and the others make default in appearance, then, subject to the power of removal hereinafter provided, the action shall proceed in the district registry.

Action proceeds in London, when.

5. If the defendant appears, or any of the defendants appear, in London, the action shall proceed in London; provided that if the Court or a Judge shall be satisfied that the defendant appearing in London is a merely formal defendant, or has no substantial cause to interfere in the conduct of the action, such Court or Judge may order that the action may proceed in the district registry, notwithstanding such appearance in London.

Rule 6 was annulled by R. S. C. Feb. 1876, and Rule 6*a* substituted for it.

Notice of appearance. R.S.C. April, 1880.

6*b*. Order XII., Rule 6*a*, of the Rules of the Supreme Court is hereby annulled and the following shall stand in lieu thereof:—

A defendant shall enter his appearance to a writ of summons by delivering to the proper officer a memorandum in writing dated on the day of its delivery, and containing the name of the defendant's solicitor, or stating that the defendant defends in person.

He shall at the same time deliver to the officer a duplicate of the memorandum, which the officer shall seal with the official seal, showing the date on which it is sealed, and then return to the person entering the appearance, and the duplicate memorandum so sealed shall be a certificate that the appearance was entered on the day indicated by the seal.

A defendant shall, on the day on which he enters an appearance to a writ of summons, give notice of his appearance to the plaintiff's solicitor, or, if the plaintiff sues in person, to the plaintiff himself. The notice may be given either by notice in writing served in the ordinary way at the address for service, or by

prepaid letter directed to that address and posted on the day of entering appearance in due course of post, and shall in either case be accompanied by the sealed duplicate memorandum.

See note to Rule 2, *ante*. The same observation applies to this rule.

Address for service.

7. The solicitor of a defendant appearing by a solicitor shall state in such memorandum his place of business, and, if the appearance is entered in the London office, a place, to be called his address for service, which shall not be more than three miles from Temple Bar, and if the appearance is entered in a district registry, a place, to be called his address for service, which shall be within the district.

The various districts are specified under Order XXXV. Rule 1*a*, and are co-extensive with the County Court districts for the time being of those places.

Where defendant appears in person.

8. A defendant appearing in person shall state in such memorandum his address, and, if the appearance is entered in the London office, a place, to be called his address for service, which shall not be more than three miles from Temple Bar, and if the appearance is entered in a district registry, a place, to be called his address for service, which shall be within the district.

Fictitious address.

9. If the memorandum does not contain such address it shall not be received; and if any such address shall be illusory or fictitious, the appearance may be set aside by the Court or a Judge, on the application of the plaintiff.

Form of memo.

10. The memorandum of appearance shall be in the Form No. 6, Appendix (A), Part I., with such variations as the circumstances of the case may require.

Entry of.

11. Upon receipt of a memorandum of appearance, the officer shall forthwith enter the appearance in the cause book.

Appearance by partners.

12. Where partners are sued in the name of their firm, they shall appear individually in their own names. But all subsequent proceedings shall, nevertheless, continue in the name of the firm.

R.S.C. June, 1876.

12*a*. Where any person carrying on business in the name of a firm apparently consisting of more than one person shall be sued in the name of the firm, he

shall appear in his own name; but all subsequent proceedings shall, nevertheless, continue in the name of the firm.

As to partners, see further, Order IX., Rules 6, 6*a*; XVI. 10*a*.

By several defendants.

13. If two or more defendants in the same action shall appear by the same solicitor and at the same time, the names of all the defendants so appearing shall be inserted in one memorandum.

Failure to appear after undertaking.

14. A solicitor not entering an appearance in pursuance of his written undertaking so to do on behalf of any defendant shall be liable to an attachment.

Appearance, time for.

15. A defendant may appear at any time before judgment. If he appear at any time after the time limited for appearance he shall, on the same day, give notice thereof to the plaintiff's solicitor, or to the plaintiff himself if he sues in person, and he shall not, unless the Court or a Judge otherwise orders, be entitled to any further time for delivering his defence, or for any other purpose, than if he had appeared according to the writ.

In Probate actions.

16. In Probate actions any person not named in the writ may intervene and appear in the action as heretofore, on filing an affidavit showing how he is interested in the estate of the deceased.

In Admiralty actions.

17. In an Admiralty action *in rem* any person not named in the writ may intervene and appear as heretofore, on filing an affidavit showing that he is interested in the *res* under arrest, or in the fund in the registry.

Recovery of land.

18. Any person not named as a defendant in a writ of summons for the recovery of land may by leave of the Court or Judge appear and defend, on filing an affidavit showing that he is in possession of the land either by himself or his tenant.

For forms of indorsement on the writ, see Appendix A, Part II., sec. 4; and as to the form of statement of claim, see Appendix C, 24, 25.

As landlord.

19. Any person appearing to defend an action for the recovery of land as landlord in respect of property whereof he is in possession only by his tenant, shall state in his appearance that he appears as landlord.

20. Where a person not named as defendant in any writ of summons for the recovery of land has obtained leave of the Court or Judge to appear and defend, he shall enter an appearance according to the foregoing rules, intituled in the action against the party or parties named in the writ as defendant or defendants, and shall forthwith give notice of such appearance to the plaintiff's solicitor, or to the plaintiff if he sues in person, and shall in all subsequent proceedings be named as a party defendant to the action.

Recovery of land, notice by person not defendant.

21. Any person appearing to a writ of summons for the recovery of land shall be at liberty to limit his defence to a part only of the property mentioned in the writ, describing that part with reasonable certainty in his memorandum of appearance or in a notice intituled in the cause, and signed by him or his solicitor; such notice to be served within four days after appearance; and an appearance where the defence is not so limited shall be deemed an appearance to defend for the whole.

Defence as to part of land.

Appearance, notice of.

22. The notice mentioned in the last preceding Rule may be in the Form No. 7 in Part I. of Appendix (A) hereto, with such variations as circumstances may require.

Form of.

ORDER XIII.

Default of Appearance.

1. Where no appearance has been entered to a writ of summons for a defendant who is an infant or a person of unsound mind not so found by inquisition, the plaintiff may apply to the Court or a Judge for an order that some proper person be assigned guardian of such defendant, by whom he may appear and defend the action. But no such order shall be made unless it appears on the hearing of such application that the writ of summons was duly served, and that notice of such application was after the expiration of the time allowed for appearance, and at least six clear days before the day in such notice named for hearing the application, served upon or left at the dwelling-house of the person with whom or under whose care such defendant was at the time of serving such writ of summons, and also (in the case of such defendant being an infant not residing with or under the care of

By infant or person of unsound mind.

his father or guardian) served upon or left at the dwelling-house of the father or guardian, if any, of such infant, unless the Court or Judge at the time of hearing such application shall dispense with such last-mentioned service.

Proceedings on.

2. Where any defendant fails to appear to a writ of summons, and the plaintiff is desirous of proceeding upon default of appearance under any of the following Rules of this Order, or under Order XV., Rule 1, he shall, before taking such proceeding upon default, file an affidavit of service, or of notice in lieu of service, as the case may be.

On specially indorsed writ.

3. In case of non-appearance by the defendant where the writ of summons is specially indorsed, under Order III., Rule 6, the plaintiff may sign final judgment for any sum not exceeding the sum indorsed on the writ, together with interest at the rate specified, if any, to the date of the judgment, and a sum for costs, but it shall be lawful for the Court or a Judge to set aside or vary such judgment upon such terms as may seem just.

As to specially indorsed writs, see note to Order III., Rule 6, *ante*.

Where several defendants.

4. Where there are several defendants to a writ specially indorsed for a debt or liquidated demand in money, under Order III., Rule 6, and one or more of them appear to the writ, and another or others of them do not appear, the plaintiff may enter final judgment against such as have not appeared, and may issue execution upon such judgment without prejudice to his right to proceed with his action against such as have appeared.

Liquidated debt. Writ not specially indorsed.

5. Where the defendant fails to appear to the writ of summons and the writ is not specially indorsed, but the plaintiff's claim is for a debt or liquidated demand only, no statement of claim need be delivered, but the plaintiff may file an affidavit of service or notice in lieu of service, as the case may be, and a statement of the particulars of his claim in respect of the causes of action stated in the indorsement upon the writ, and may, after the expiration of eight days, enter final judgment for the amount shown thereby and costs to be taxed, provided that the amount shall not be more than the sum indorsed upon the writ besides costs.

When no irreparable wrong will be done to a plaintiff, who has obtained judgment by default, lapse of time is not a bar to an application to set it aside. (*Atwood* v. *Chichester*, 3 Q. B. D. 722.)

R.S.C. Dec. 1875. District Registry.

5*a*. Where a defendant fails to appear to a writ of summons issued out of a district registry, and the defendant had the option of entering an appearance either in the district registry or in the London office, judgment for want of appearance shall not be entered by the plaintiff until after such time as a letter posted in London on the previous evening, in due time for delivery to him on the following morning, ought, in due course of post, to have reached him.

When claim for unliquidated damages.

6. Where the defendant fails to appear to the writ of summons and the plaintiff's claim is not for a debt or liquidated demand only, but for detention of goods and pecuniary damages, or either of them, no statement of claim need be delivered, but interlocutory judgment may be entered and a writ of inquiry shall issue to assess the value of the goods and the damages, or the damages only, as the case may be, in respect of the causes of action disclosed by the indorsement on the writ of summons. But the Court or a Judge may order that, instead of a writ of inquiry, the value and amount of damages, or either of them, shall be ascertained in any way in which any question arising in an action may be tried.

As to proceedings on a replevin bond, see *Dix* v. *Groom*, 5 Ex. D. 91.

A plaintiff may sign judgment for the return of specific goods under this order, and may then proceed under Order XLII. Rule 4, and enforce his judgment by writ of delivery. (*Ivory* v. *Cruikshank*, W. N. 1875, 249.

In action for recovery of land.

7. In case no appearance shall be entered in an action for the recovery of land, within the time limited for appearance, or if an appearance be entered but the defence be limited to part only, the plaintiff shall be at liberty to enter a judgment that the person whose title is asserted in the writ shall recover possession of the land, or of the part thereof to which the defence does not apply.

Claim for mesne profits.

8. Where the plaintiff has indorsed a claim for mesne profits, arrears of rent, or damages for breach of contract, upon a writ for the recovery of land, he may enter judgment as in the last preceding Rule mentioned for the land; and may proceed as in the other

his father or guardian) served upon or left at the dwelling-house of the father or guardian, if any, of such infant, unless the Court or Judge at the time of hearing such application shall dispense with such last-mentioned service.

Proceedings on.

2. Where any defendant fails to appear to a writ of summons, and the plaintiff is desirous of proceeding upon default of appearance under any of the following Rules of this Order, or under Order XV., Rule 1, he shall, before taking such proceeding upon default, file an affidavit of service, or of notice in lieu of service, as the case may be.

On specially indorsed writ.

3. In case of non-appearance by the defendant where the writ of summons is specially indorsed, under Order III., Rule 6, the plaintiff may sign final judgment for any sum not exceeding the sum indorsed on the writ, together with interest at the rate specified, if any, to the date of the judgment, and a sum for costs, but it shall be lawful for the Court or a Judge to set aside or vary such judgment upon such terms as may seem just.

As to specially indorsed writs, see note to Order III., Rule 6, *ante*.

Where several defendants.

4. Where there are several defendants to a writ specially indorsed for a debt or liquidated demand in money, under Order III., Rule 6, and one or more of them appear to the writ, and another or others of them do not appear, the plaintiff may enter final judgment against such as have not appeared, and may issue execution upon such judgment without prejudice to his right to proceed with his action against such as have appeared.

Liquidated debt. Writ not specially indorsed.

5. Where the defendant fails to appear to the writ of summons and the writ is not specially indorsed, but the plaintiff's claim is for a debt or liquidated demand only, no statement of claim need be delivered, but the plaintiff may file an affidavit of service or notice in lieu of service, as the case may be, and a statement of the particulars of his claim in respect of the causes of action stated in the indorsement upon the writ, and may, after the expiration of eight days, enter final judgment for the amount shown thereby and costs to be taxed, provided that the amount shall not be more than the sum indorsed upon the writ besides costs.

When no irreparable wrong will be done to a plaintiff, who has obtained judgment by default, lapse of time is not a bar to an application to set it aside. (*Atwood* v. *Chichester*, 3 Q. B. D. 722.)

R.S.C. Dec. 1875. District Registry.

5*a*. Where a defendant fails to appear to a writ of summons issued out of a district registry, and the defendant had the option of entering an appearance either in the district registry or in the London office, judgment for want of appearance shall not be entered by the plaintiff until after such time as a letter posted in London on the previous evening, in due time for delivery to him on the following morning, ought, in due course of post, to have reached him.

When claim for unliquidated damages.

6. Where the defendant fails to appear to the writ of summons and the plaintiff's claim is not for a debt or liquidated demand only, but for detention of goods and pecuniary damages, or either of them, no statement of claim need be delivered, but interlocutory judgment may be entered and a writ of inquiry shall issue to assess the value of the goods and the damages, or the damages only, as the case may be, in respect of the causes of action disclosed by the indorsement on the writ of summons. But the Court or a Judge may order that, instead of a writ of inquiry, the value and amount of damages, or either of them, shall be ascertained in any way in which any question arising in an action may be tried.

As to proceedings on a replevin bond, see *Dix* v. *Groom*, 5 Ex. D. 91.

A plaintiff may sign judgment for the return of specific goods under this order, and may then proceed under Order XLII. Rule 4, and enforce his judgment by writ of delivery. (*Ivory* v. *Cruikshank*, W. N. 1875, 249.

In action for recovery of land.

7. In case no appearance shall be entered in an action for the recovery of land, within the time limited for appearance, or if an appearance be entered but the defence be limited to part only, the plaintiff shall be at liberty to enter a judgment that the person whose title is asserted in the writ shall recover possession of the land, or of the part thereof to which the defence does not apply.

Claim for mesne profits.

8. Where the plaintiff has indorsed a claim for mesne profits, arrears of rent, or damages for breach of contract, upon a writ for the recovery of land, he may enter judgment as in the last preceding Rule mentioned for the land; and may proceed as in the other

preceding Rules of this order as to such other claim so indorsed.

In actions for the recovery of land, no causes of action will usually be allowed to be joined except such as are intimately connected with the subject-matter of the dispute. Order XVII. Rule 2, *post*.

Action may proceed, when.

9. In actions assigned by the 34th section of the Act to the Chancery Division, and in Probate actions, and in all other actions not by the Rules in this order otherwise specially provided for, in case the party served with the writ does not appear within the time limited for appearance, upon the filing by the plaintiff of a proper affidavit of service the action may proceed as if such party had appeared.

This rule does not dispense with service of statement of claim. (*Minton* v. *Metcalf*, 46 L. J. Ch. 488.)

R.S.C. Dec. 1875.

Rule 10 has been annulled by R.S.C., December, 1875, Rule 8, and the effect has been to revive the practice previously existing in the High Court of Admiralty. (*The Polymede*, 1 P.D. 121.)

ORDER XIV.

Leave to Defend where Writ specially Indorsed.

R.S.C. May, 1877.

1. Order XIV., Rule 1, of the Rules of the Supreme Court is hereby repealed, and the following Rule is substituted:—

Where the defendant appears to a writ of summons specially indorsed under Order III., Rule 6, the plaintiff may, on affidavit made by himself, or by any other person who can swear positively to the debt or cause of action, verifying the cause of action, and stating that in his belief there is no defence to the action, call on the defendant to show cause before the Court or a Judge why the plaintiff should not be at liberty to sign final judgment for the amount so indorsed, together with interest, if any, and costs. A copy of the affidavit shall accompany the summons or notice of motion. The Court or a Judge may thereupon, unless the defendant, by affidavit or otherwise, satisfy the Court or a Judge that he has a good defence to the action on the merits, or disclose such facts as may be deemed sufficient to entitle him to defend, make an order empowering the plaintiff to sign judgment accordingly.

Plaintiff may take out the summons prior to filing his affidavit. (*Begg* v. *Cooper*, 27 W. R. 224.)

The provisions of this rule ought not to be exercised save where the case is quite free from doubt. If he can satisfy the Court that

he has a good defence on the merits, the defendant is entitled to be let in to defend without having any terms imposed on him. If he only discloses facts which may entitle him to defend, then such terms may be imposed as may be thought fit, under Rule 6 of this Order. (*Ray* v. *Barker*, 48 L. J. 569; *Lloyd's Banking Company* v. *Ogle*, 1 Ex. D. 262; *Runnacles* v. *Mesquita*, 1 Q. B. D. 416.)

If the defendant can on hearsay evidence suggest a defence, or show some probability of either proving it himself, or getting it from the plaintiff, by interrogatories, he ought to be allowed to defend. (*Harrison* v. *Bottenheim*, 26 W. R. 362.)

Should the affidavit in defence admit part of the claim, the master has no power to make the leave to defend conditional upon payment within a limited time of the sum admitted. (*Dennis* v. *Seymour*, 4 Ex. D. 80.)

If the defendant have paid money into Court as a condition for obtaining leave to defend, he is entitled to have his money returned on obtaining judgment in the Divisional Court, notwithstanding that notice of appeal has been given. (*Yorkshire Banking Company* v. *Beatson*, 4 C. P. D. 213.)

Payment into Court of the amount indorsed upon the writ will not entitle a defendant to defend as a matter of right. (*Crump* v. *Cavendish*, 5 Ex. D. 211.)

Where the defendant has filed an affidavit for leave to defend, there is a conflict of opinion whether the plaintiff can file a counter affidavit by way of reply on the merits. (*North Central Waggon Company* v. *North Wales Waggon Company*, 39 L. T. 628; *Girvin* v. *Grepe*, 13 Ch. D. 174, and see note to Rule 3, *post*.)

A defendant Corporation, not being able to make an affidavit, can only show cause under the words "or otherwise." (*Muirhead* v. *Direct United States Cable Company*, 27 W. R. 708, Q. B.)

An order to sign judgment under this Rule is an interlocutory order. (*Standard Discount Company* v. *Lagrange*, 3 C. P. D. 67.)

When leave to defend is given, statement of defence must be delivered within eight days. Orders XXI., Rule 4, and XXII., Rule 3, *post*.

Application for leave.

2. The application by the plaintiff for leave to enter final judgment under the last preceding rule shall be made by summons returnable not less than two clear days after service.

Defendant may show cause.

3. The defendant may show cause against such application by offering to bring into Court the sum indorsed on the writ, or by affidavit. In such affidavit he shall state whether the defence he alleges goes to the whole or to part only, and if so, to what part, of the plaintiff's claim. And the judge may, if he think fit, order the defendant to attend and be examined upon oath; or to produce any books or documents or copies of or extracts therefrom.

Upon an application by the plaintiff for leave to sign judgment under this order, the Judge may in his discretion allow the plaintiff to file an affidavit in reply to the defendant's affidavit. (*Davis* v. *Spence*, 1 C. P. D. 719.) But as a rule such course will not be

allowed. (*Rotherham* v. *Priest*, 28 W. R. 277.) This seems to be the practical result of the cases.

See also note to Rule 1*a*, *ante*.

Defence as to part.

4. If it appear that the defence set up by the defendant applies only to a part of the plaintiff's claim; or that any part of his claim is admitted to be due; the plaintiff shall have judgment forthwith for such part of his claim as the defence does not apply to or as is admitted to be due, subject to such terms, if any, as to suspending execution, or the payment of the amount levied or any part thereof into Court by the sheriff, the taxation of costs, or otherwise, as the Judge may think fit. And the defendant may be allowed to defend as to the residue of the plaintiff's claim.

Where a portion of a claim is admitted to be due, the master has no power to make an order that the defendant's leave to defend should be conditional on his payment of the amount admitted. The plaintiff should have judgment for the amount admitted to be due, the defendant leave to defend as to the residue. (*Dennis* v. *Seymour*, W. N. 1879, 60; *Hanmer* v. *Flight*, 24 W. R. 346; 35 L. T. 127.)

Defence good, as to one of several defendants.

5. If it appears to the Judge that any defendant has a good defence to or ought to be permitted to defend the action, and that any other defendant has not such defence and ought not to be permitted to defend, the former may be permitted to defend, and the plaintiff shall be entitled to enter final judgment against the latter, and may issue execution upon such judgment without prejudice to his right to proceed with his action against the former.

Leave to defend, when.

6. Leave to defend may be given unconditionally or subject to such terms as to giving security, or otherwise, as the Court or a Judge may think fit.

See note to rule 1*a*, *ante*.

ORDER XV.

Application for Account where Writ indorsed under Order III., Rule 8.

Summary order, when.

1. In default of appearance to a summons indorsed under Order III., Rule 8, and after appearance unless the defendant, by affidavit or otherwise, satisfy the Court or a Judge that there is some preliminary

question to be tried, an order for the account claimed, with all directions now usual in the Court of Chancery in similar cases, shall be forthwith made.

In an administration action, where there was a claim by a person interested under a will against the executors who appeared but did not oppose, the Court declined to make an order under this Rule without delivery of statement of claim. The Vice-Chancellor felt embarrassed in making such an order, in the absence of any knowledge as to the contents of the will. (*Re Huckwell, David* v. *Dalton*, W. N. 1879, 86.)

It is only in default of appearance that a District Registrar can make such an order. (*Irlam* v. *Irlam*, 2 Ch. D. 608.)

As to accounts generally, see "Seton on Decrees," 4th ed. chap. xxii. p. 771.

As to account in Administration actions, see same, chap. xxiii. p. 801.

As to account in partnership, see same, chap. xxvii. p. 1197.

An order for accounts under this Rule after issuing the writ in a foreclosure action and appearance entered by the defendant, should not prejudice the trial of any issues which might be raised by subsequent pleadings. The words "and the Judge not requiring any trial of this action other than this application," given in the common form in "Seton, 4th ed., p. 8," should not be used indiscriminately. (*Gatti* v. *Webster*, 12 Ch. D. 771.)

How and when obtained.

2. An application for such order as mentioned in the last preceding Rule shall be made by summons, and be supported by an affidavit filed on behalf of the plaintiff, stating concisely the grounds of his claim to an account. The application may be made at any time after the time for entering an appearance has expired.

See Order XIII. Rule 2, *ante*.

ORDER XVI.

Parties.

Who may be joined as plaintiffs.

1. All persons may be joined as plaintiffs in whom the right to any relief claimed is alleged to exist, whether jointly, severally, or in the alternative. And judgment may be given for such one or more of the plaintiffs as may be found to be entitled to relief, for such relief as he or they may be entitled to, without any amendment. But the defendant, though unsuccessful, shall be entitled to his costs occasioned by so joining any person or persons who shall not be found entitled to relief, unless the Court in disposing of the costs of the action shall otherwise direct.

Under this Rule, persons who have separate causes of action arising out of the same state of facts, may be joined as plaintiffs in the same action. (*Booth* v. *Briscoe*, 2 Q. B. D. 496; *Appleton* v. *The Chapel Town Paper Co.*, 45 L. J. Ch. 276.) Such joinder would generally be for the benefit of the defendant, but in case it were calculated to embarrass him in his defence, the Court will have power to deal with the matter under Rules 2 or 13, *post*. The practice of the Court of Chancery, before the Judicature Act, was that a plaintiff could not claim inconsistent alternative relief. This practice is now altered. (*Child* v. *Stenning*, 5 Ch. D. 695; *Honduras Railway Co.* v. *Tucker*, 2 Ex. D. 301.)

See also change of parties by death, Order L., *post*.

Proper plaintiff may be substituted.

2. Where an action has been commenced in the name of the wrong person as plaintiff, or where it is doubtful whether it has been commenced in the name of the right plaintiff or plaintiffs, the Court or a Judge may, if satisfied that it has been so commenced through a *bonâ fide* mistake, and that it is necessary for the determination of the real matter in dispute so to do, order any other person or persons to be substituted or added as plaintiff or plaintiffs upon such terms as may seem just.

The application must not be made *ex parte* (*Tildesley* v. *Harper*, 3 Ch. D. 277). Where the plaintiff was equitable assignee of a chose in action. An application to add the name of the assignor as co-plaintiff will only be granted upon proof of his consent, or that he has been communicated with, and all terms necessary for his protection offered to him. (*Turquand* v. *Fearon*, 4 Q. B. D. 280; but see *The Val de Travers Co.* v. *The London Tramways Co.*, 40 L. T. 133.) A shareholder of a company was allowed to add the company as plaintiffs, without the production by him of any authority to use their name (*Duckett* v. *Gover*, 6 Ch. D. 82), explained in *Mason* v. *Harris*, 11 Ch. D. 97; but where it is shown that this is contrary to the wish of the majority of the shareholders, the Court will direct the company to be struck out as plaintiffs, and may add them as defendants. (*Silber Light Co.* v. *Silber*, 12 Ch. D. 717.) A *bonâ fide* mistake includes a mistake of law as well as of fact (*Duckett* v. *Gover*, *suprà*); but it must be a mistake, not an erroneous view of the law, which the parties have elected to argue on demurrer. (*Clowes* v. *Hilliard*, 4 Ch. D. 413.)

Who may be joined as defendants.

3. All persons may be joined as defendants against whom the right to any relief is alleged to exist, whether jointly, severally, or in the alternative. And judgment may be given against such one or more of the defendants as may be found to be liable, according to their respective liabilities, without any amendment.

This is a large extension of the jurisdiction of the Chancery Division. (See *Child* v. *Stenning*, 5 Ch. D. 695, XVII. 1, *post*.)

Before joining defendants in the alternative, it is well to remember that in the event of being successful against one, plaintiff may nevertheless be obliged to pay the costs of the other. (*Child* v. *Stenning*, 7 Ch. D. 413.)

Separate causes of action against different defendants, even though inconsistent with each other, may be joined. Cockburn, C.J., seemed to think it doubtful whether the plaintiff would be entitled to do this if the redress claimed against them differed in substance. (*Honduras Railway Co.* v. *Tucker*, 2 Ex. D. 301.) In *Howell* v. *West*, W. N. 1879, 90, a plaintiff was allowed to join a cause of action against a schoolmaster for breach of contract, in not keeping a boy exclusively under his own management, with one against the medical attendant for negligence in the exercise of his profession.

Defe dant interested as to part.

4. It shall not be necessary that every defendant to any action shall be interested as to all the relief thereby prayed for, or as to every cause of action included therein; but the Court or a Judge may make such order as may appear just to prevent any defendant from being embarrassed or put to expense by being required to attend any proceedings in such action in which he may have no interest.

This was not the practice of the Court of Chancery previous to the Judicature Acts. (*Cox* v. *Barker*, 3 Ch. D. 359.)

Joint and several liability.

5. The plaintiff may, at his option, join as parties to the same action all or any of the persons severally, or jointly and severally, liable on any one contract, including parties to bills of exchange and promissory notes.

Joinder in doubtful cases.

6. Where in any action, whether founded upon contract or otherwise, the plaintiff is in doubt as to the person from whom he is entitled to redress, he may, in such manner as hereinafter mentioned, or as may be prescribed by any special order, join two or more defendants, to the intent that in such action the question as to which, if any, of the defendants is liable, and to what extent, may be determined as between all parties to the action.

See note to Rule 3, *ante*.

Trustees, &c. to represent estate.

7. Trustees, executors, and administrators may sue and be sued on behalf of or as representing the property or estate of which they are trustees or representatives, without joining any of the parties beneficially interested in the trust or estate, and shall be considered as representing such parties in the action; but the Court or a Judge may, at any stage of the proceedings, order any of such parties to be made parties to the action, either in addition to or in lieu of the previously existing parties thereto.

This rule applies to actions under the Partition Acts; and the trustees may be treated as sufficiently representing the beneficiaries (*Simpson* v. *Denny*, 10 Ch. D. 28; *Stace* v. *Gaye*, 8 Ch. D. 451); and to the trustees of an equity of redemption in a redemption action (*Mills* v. *Jennings*, 13 Ch. D. 639.)

Married women and infants.

8. Married women and infants may respectively sue as plaintiffs by their next friends, in the manner practised in the Court of Chancery before the passing of this Act; and infants may, in like manner, defend any action by their guardians appointed for that purpose. Married women may also, by the leave of the Court or a Judge, sue or defend without their husbands and without a next friend, on giving such security (if any) for costs as the Court or a Judge may require.

Next friend.

An authority, given by a married woman to her next friend to commence an action, cannot be filed. (*Rogers* v. *Horn*, 26 W. R. 432.)

A married woman, suing for her separate estate, ought to sue by her next friend, making her husband a co-defendant (*Roberts* v. *Evans*, 7 Ch. D. 830); but the Court has a discretion to allow her to sue alone with or without giving security, and to direct a next friend to give security at any time in a proper case. (*Martana* v. *Mann*, W. N. 1880, 80.)

The order giving her leave to defend should be obtained by special leave, and not on petition of course. When she is in receipt of a large separate income, she will not be required to give security for costs. (*Noel* v. *Noel*, 13 Ch. D. 510.)

Joinder of husband.

A married woman cannot be sued alone, in respect of her separate estate, for the price of goods sold to her during her coverture. Her husband must be joined as defendant. (*Hancocks* v. *Lablache*, 3 C. P. D. 197.)

An order will be made declaring that the plaintiff is entitled to be paid the sum found to be due and costs out of the separate estate to which she may be entitled, with power of anticipation. (*Barber* v. *Gregson*, L. J. Notes of Cases, 1880, 57; *Atwood* v. *Chichester*, 3 Q. B. D. 722.)

A married woman who allows judgment to go by default, or does not plead her coverture, is precisely in the same position as if she were a feme sole. (*Dillon* v. *Cunningham*, L. R. 8 Ex. 23.)

She may maintain an action in her own name, however, under sec. 11 of 33 & 34 Vict. c. 93 (Married Women's Property Act), and see the observations on this point in *ex parte Jones*, *Re Grissell*, 12 Ch. D. 488.

Demurrer.

A defence by the husband under the Married Women's Property Amendment Act, 1874, cannot be raised by demurrer. (*Matthews* v. *Whittle*, 13 Ch. D. 811.)

Where the husband was infant plaintiff's next friend, and also co-defendant with the wife, the Court allowed the wife to defend alone. (*Lewis* v. *Nobbs*, 8 Ch. D. 593.)

As to the manner practised in the Court of Chancery, before the passing of the Act, see "Daniell's Chancery Practice," 4th ed. p. 175.

See Order III., Rule 4, *ante*.

Parties having the same interest.

9. Where there are numerous parties having the same interest in one action, one or more of such parties may sue or be sued, or may be authorised by the Court to defend in such action, on behalf or for the benefit of all parties so interested.

A plaintiff suing under this Rule must indorse his writ, on behalf of himself and all others, for whose benefit he is suing. (*Worraker* v. *Pryer*, 2 Ch. D. 109; *Fryer* v. *Royle*, 5 Ch. D. 540; *Eyre* v. *Cox*, 24 W. R. 317.)

Where the plaintiff sued on behalf of himself and the other owners of a ship, it was held, that the defendant was not entitled to have the other owners joined as parties, in order to have the security of their liability for costs. (*De Hart* v. *Stevenson*, 1 Q. B. D. 313.)

R.S.C. June, 1876.

9*a*. In any case in which the right of an heir-at-law or the next-of-kin or a class shall depend upon the construction which the Court may put upon an instrument, and it shall not be known or be difficult to ascertain who is or are such heir-at-law or next-of-kin or class, and the Court shall consider that in order to save expense or for some other reason, it will be convenient to have the question or questions of construction determined before such heir-at-law, next-of-kin, or class shall have been ascertained by means of inquiry or otherwise, the Court may appoint some one or more person or persons to represent such heir-at-law, next-of-kin, or class, and the judgment of the Court in the presence of such person or persons shall be binding upon the party or parties or class so represented.

In an administration action, certain persons were appointed as representatives of various classes, and inquiries were directed; it turned out afterwards that some of these inquiries were unnecessary: the Court thereupon directed a summons to be taken out to stay inquiries and adjourn the matter into Court. (*Beale* v. *Ruston*, W. N. 1878, p. 179.)

Under this Rule, in *Chester* v. *Phillips*, 4 Ch. D. 230, the Court appointed a person to represent the heir-at-law, where great difficulty was foreseen in attempting to find him.

Firm, members of.

10. Any two or more persons claiming or being liable as co-partners may sue or be sued in the name of their respective firms, if any; and any party to an action may in such case apply by summons to a Judge for a statement of the names of the persons who are co-partners in any such firm, to be furnished in such manner, and verified on oath or otherwise, as the Judge may direct.

James, L.J., has pointed out that it is not under all circumstances that a partnership may be sued in the name of the firm;

e.g., if A. and B. be the partners at the time of action, and C. and D. at the time the contract was made. (*Ex parte Blain, Re Sawers*, 12 Ch. D. 522.)

R.S.C. June, 1876.

10*a*. Any person carrying on business in the name of a firm apparently consisting of more than one person may be sued in the name of such firm.

As to partner residing out of the jurisdiction, see Order 1X. Rule 6*a*, *ante*, *note*.

Administration. Incorporation of procedure.

11. Subject to the provisions of the Act, and these Rules, the provisions as to parties, contained in section 42 of 15 & 16 Victoria, chapter 86, shall be in force as to actions in the High Court of Justice.

15 *&* 16 *Vict. c.* 86, *s.* 42.

It shall not be competent to any defendant in any suit in the said Court to take any objections for want of parties to such suit, in any case to which the Rules next hereinafter set forth extend, and such Rules shall be deemed and taken as part of the law and practice of the said Court, and any law or practice of the said Court inconsistent therewith shall be and is hereby abrogated and annulled.

Rule 1. Any residuary legatee or next-of-kin may, without serving the remaining residuary legatees or next-of kin, have a decree for the administration of the personal estate of a deceased person.

Rule 2. Any legatee interested in a legacy charged upon real estate, and any person interested in the proceeds of real estate directed to be sold, may without serving any other legatee or person interested in the proceeds of the estate have a decree for the administration of the estate of a deceased person.

Rule 3. Any residuary devisee or heir may, without serving any co-residuary devisee or co-heir, have the like decree.

Rule 4. Any one of several cestuisque trust under any deed or instrument may, without serving any other of such cestuisque trust, have a decree for the execution of the trusts of the deed or instrument.

Rule 5. In all cases of suits for the protection of property pending litigation, and in all cases in the nature of waste, one person may sue on behalf of himself and of all persons having the same interest.

Rule 6. Any executor, administrator, or trustee may obtain a decree against any one legatee, next-of-kin, or cestuique trust for the administration of the estate or the execution of the trusts.

Rule 7. In all the above cases the Court, if it shall see fit, may require any other person or persons to be made a party or parties to the suit, and may, if it shall see fit, give the conduct of the suit to such person as it may deem proper, and may make such Order in any particular case as it may deem just for placing the defendant on the record, on the same footing in regard to costs, as other parties having a common interest with him in the matters in question.

Rule 8. In all the above cases the persons who, according to the present practice of the Court, would be necessary parties to the suit, shall be served with notice of the decree, and after such notice they shall be bound by the proceedings in the same manner

as if they had been originally made parties to the suit, and they may by an Order of course have liberty to attend the proceedings under the Decree; and any party so served may within such time as shall in that behalf be prescribed by the General Order of the Lord Chancellor apply to the Court to add to the Decree.

Rule 9. In all suits concerning real or personal estate which is vested in trustees under a will, settlement, or otherwise, such trustees shall represent the persons beneficially interested under the trust in the same manner, and to the same extent as the executors or administrators in suits concerning personal estate, represent the persons beneficially interested in such personal estate; and in such cases it shall not be necessary to make the persons beneficially interested, under the trust, parties to the suit; but the Court may, upon the consideration of the matter on the hearing, if it shall so think fit, order such persons or any of them to be made parties.

12. Subject as last aforesaid, in all Probate actions the rule as to parties, heretofore in use in the Court of Probate, shall continue to be in force. Probate actions.

The practice as to citations to see proceedings remains unaltered. (*Kennaway* v. *Kennaway*, 1 P. D. 148.)

12*a*. Notice of a judgment or order pursuant to the Act 15 & 16 Vict. c. 86, s. 42, on an infant or person of unsound mind not so found by inquisition shall be served in the same manner as a writ of summons in an action. Service of notice on infant or person of unsound mind. R.S.C. April, 1880.

12*b*. In any cause for the administration of the estate of a deceased person, no party to the cause other than the executor or administrator shall, unless by leave of the Judge, be entitled to appear either in Court or in Chambers on the claim of any person not a party to the cause against the estate of the deceased in respect of any debt or liability. The Judge may direct any other party to the cause to appear, either in addition to or in the place of the executor or administrator, upon such terms as to costs or otherwise as he shall think fit. Parties to administration proceeding. R.S.C. April, 1880.

13. No action shall be defeated by reason of the misjoinder of parties, and the Court may in every action deal with the matter in controversy so far as regards the rights and interests of the parties actually before it. The Court or a Judge may, at any stage of the proceedings, either upon or without the application of either party, and on such terms as may appear to the Court or a Judge to be just, order that the name or names of any party or parties, whether as plaintiffs or as defendants, improperly Misjoinder of.

joined be struck out, and that the name or names of any party or parties, whether plaintiffs or defendants, who ought to have been joined, or whose presence before the Court may be necessary in order to enable the Court effectually and completely to adjudicate upon and settle all the questions involved in the action, be added. No person shall be added as a plaintiff suing without a next friend, or as the next friend of a plaintiff under any disability, without his own consent thereto. All parties whose names are so added as defendants shall be served with a summons or notice in manner hereinafter mentioned, or in such manner as may be prescribed by any special order, and the proceedings as against them shall be deemed to have begun only on the service of such summons or notice.

Plaintiff not to be added, without consent.

In an action for libel against the publisher of a newspaper, the proprietor was allowed to be added as a defendant, on the terms that when joined, he should have the same rights as he would have had, if the action were then commenced. (*Edward* v. *Lowther*, 45 L. J. 417.)

Parties are not allowed to be added merely to have their security for costs. (*De Hart* v. *Stevenson*, 1 Q. B. D. 313.)

The Court should be able to see that the presence of a party is necessary, to adjudicate upon and settle all the questions involved in the action; this portion of the rule will be construed strictly, to prevent plaintiffs being harassed, by defendant forcing them to include in their actions persons against whom they do not seek to proceed; and to mix up their rights as against one person with questions of a highly complicated nature, arising between themselves and others. (*Norris* v. *Beazley*, 2 C. P. D. 80, *Harry* v. *Davey*, 2 Ch. D. 721.)

Bill of Exchange.

The vendor of goods and the endorsee of a bill given for the price, ought not to be joined in actions to recover the price, and also upon the dishonoured bill. (*Smith* v. *Richardson*, 4 C. P. D. 112).

If a defendant, who might have had a proper case for being discharged under this rule, does not take advantage of it, but identifies his defence with that of his co-defendant and incurs expense in so doing, he will not necessarily be exonerated from liability to costs, should the action be compromised by the principals. (*Twinbarrow* v. *Braid*, W. N. 1878, 169.)

New plaintiff.

A plaintiff who has been decided to have no interest in the matter will not be allowed by amendment to introduce new plaintiffs and make an entirely new case. (*New Westminster Brewery* v. *Hannah*, W. N. 1877, 35.)

A defendant should apply to be struck out under this rule at the first possible moment. (*Vallance* v. *The Birmingham and Midland Land and Investment Corporation*, 2 Ch. D. 372.)

As to citations to see proceedings, see note to Rule 12, *ante*.

Amendment.

14. Any application to add or strike out or substitute a plaintiff or defendant may be made to the

Court or a Judge at any time before trial by motion or summons, or at the trial of the action in a summary manner.

An alteration in the parties to an action will not be made on an *ex parte* application. (*Tildesley* v. *Harper*, 3 Ch. D. 277.)

Service on new defendant.

15. Where a defendant is added, unless otherwise ordered by the Court or Judge, the plaintiff shall file an amended copy of and sue out a writ of summons, and serve such new defendant with such writ or notice in lieu of service thereof in the same manner as original defendants are served.

This rule does not meet the case of consolidated actions. (Jessel, M. R., in *Culley* v. *Wortley*, 4 Ch. D. 181.)

New defendant to have copy statement of claim.

16. If a statement of claim has been delivered previously to such defendant being added, the same shall, unless otherwise ordered by the Court or Judge, be amended in such manner as the making such new defendant a party shall render desirable, and a copy of such amended statement of claim shall be delivered to such new defendant at the time when he is served with the writ of summons or notice or afterwards, within four days after his appearance.

Where defendant claims remedy over.

17. Where a defendant is or claims to be entitled to contribution or indemnity, or any other remedy or relief over against any other person, or where from any other cause it appears to the Court or a Judge that a question in the action should be determined not only as between the plaintiff and defendant, but as between the plaintiff, defendant, and any other person, or between any or either of them, the Court or a Judge may, on notice being given to such last-mentioned person, make such order as may be proper for having the question so determined.

The Court will not allow a third party to be brought in under this rule if it will tend to prejudice and delay plaintiff. (*Bower* v. *Hartley*, 1 Q. B D. 652; *Swansea Shipping Co.* v. *Duncan*, 1 Q. B. D. 644; and *Horwell* v. *London Omnibus Co.*, 2 Ex. D. 369.)

Thus where the vendor to a company was sued on the ground that the promoters had conspired to increase the purchase money by 2000*l.*, and that he had agreed to give them that sum as commission, Malins, V. C., refused to allow the plaintiff company to be embarassed by any questions as between the defendant and the promoters. He therefore refused an application to serve them with a notice. (*The Associated Home Co.* v. *Whichcord*, 8 Ch. D. 457. See further the reasoning in *Norris* v. *Beazley*, Rule 13, *ante*, in note.)

But if there was a substantial question in the action which was common to all parties, and the plaintiff will not be prejudiced or delayed thereby (*i.e.*, we take it, to any material extent), the application under this rule will be granted without difficulty. (*Benecke* v. *Frost*, 1. Q. B. D. 419; *Swansea Shipping Co.* v. *Duncan*, Ibid. 644; *Bower* v. *Hartley*, Ibid. 652; *Treleaven* v. *Bray*, 1 Ch. D. 176.)

Fourth party. A third party brought in under this rule may in his turn apply to bring in a fourth party. (Judicature Act, 1873, sec. 24, sub-sec. 3. *Fowler* v. *Knoop*, W. N. 1877, 68, 36 L. T. 269.)

Defence against plaintiff, claim against co-defendant. A defendant may raise a question between himself and his co-defendant, by a pleading which contains both a defence as against the plaintiff and a claim as against the co-defendant. The delivery of such a pleading to the co-defendant is sufficient notice under this rule. It is distinct from a counter-claim, under Order XXII., Rule 5, and should not be so intituled. (*Furness* v. *Booth*, 4 Ch. D. 586. Hall, V. C., appeared to think differently in *Shepherd* v. *Beane*, 2 Ch. D. 223, which was not fully argued, and he afterwards declined to regard it as an authority in *Harris* v. *Gamble*, 6 Ch. D. 751.)

Issues by third party. A third party, who desires to have the whole dispute settled in one action, should take care to have proper issues settled between him and the defendant for that purpose. (*The Cartsburn*, 5 P. D. 59.) In this action, which was for a negligent collision, a notice by which a third party was directed to appear stated, "that in default of such appearance the noticee would be precluded from disputing the validity of the judgment in the action." He accordingly appeared, and an order was made that he should be at liberty to appear and defend, being bound, as between him and the defendants, by any decision the Court might come to as to the cause of the collision. No pleadings were directed, and no issues were ordered to be tried between him and the defendant. The defendant did not appear at the trial. Under these circumstances it was held that it was incompetent to the Court to decide any rights as between the third party and the defendant, except the one set forth in the notice.

Notice to third party. 18. Where a defendant claims to be entitled to contribution, indemnity, or other remedy or relief over against any person not a party to the action, he may, by leave of the Court or a Judge, issue a notice to that effect, stamped with the seal with which writs of summons are sealed. A copy of such notice shall be filed with the proper officer and served on such person according to the rules relating to the service of writs of summons. The notice shall state the nature and grounds of the claim, and shall, unless otherwise ordered by the Court or a Judge, be served within the time limited for delivering his statement of defence. Such notice may be in the form or to the effect of the Form No. 1 in Appendix (B) hereto with such variations as circumstances may require, and therewith shall be served a copy of the statement of claim, or if there be no statement of claim, then a copy of the writ of summons in the action.

Form of.

A doubt has been suggested whether there is any power to bring in fourth and fifth parties. (*The Yorkshire Waggon Co.* v. *Newport Coal Co.*, 5 Q. B. D. 268.)

Judge may order party to be added.

19. When under Rule 17 of this Order it is made to appear to the Court or a Judge at any time before or at the trial that a question in the action should be determined, not only as between the plaintiff and defendant, but as between the plaintiff and the defendant and any other person, or between any or either of them, the Court or a Judge, before or at the time of making the order for having such question determined, shall direct such notice to be given by the plaintiff at such time and to such person and in such manner as may be thought proper, and if made at the trial the Judge may postpone such trial as he may think fit.

Time for appearance.

Effect of default.

20. If a person not a party to the action, who is served as mentioned in Rule 18, desires to dispute the plaintiff's claim in the action as against the defendant on whose behalf the notice has been given, he must enter an appearance in the action within eight days from the service of the notice. In default of his so doing, he shall be deemed to admit the validity of the judgment obtained against such defendant, whether obtained by consent or otherwise. Provided always, that a person so served and failing to appear within the said period of eight days may apply to the Court or a Judge for leave to appear, and such leave may be given upon such terms, if any, as the Court or a Judge shall think fit.

Where defendants had given notice under Rule 17 to third parties, who had appeared and succeeded in reducing the damages to a sum paid into Court by the defendants, the third party or parties were not allowed their costs from the plaintiff, the Court pointing out that they were not brought in by him, but were brought in or came in for their own advantage. (*Williams* v. *The South-Eastern Ry. Co.*, 26 W. R. 352).

Proceedings on appearance.

21. If a person not a party to the action served under these rules appears pursuant to the notice, the party giving the notice may apply to the Court or a Judge for directions as to the mode of having the question in the action determined; and the Court or Judge, upon the hearing of such application, may, if it shall appear desirable so to do, give the person so served liberty to defend the action upon such terms as shall seem just, and may direct such pleadings to be delivered, or such amendments in any pleadings

to be made, and generally may direct such proceedings to be taken, and give such directions as to the Court or a Judge shall appear proper for having the question most conveniently determined, and as to the mode and extent in or to which the person so served shall be bound or made liable by the decision of the question.

In *Witham* v. *Vane*, 28 W. R. 276, a third party was given leave to put in a defence to the statement of claim, and serve notice on other persons. The statement of defence was, under the circumstances, limited to any points not raised in the defence of the defendants.

Discovery. When third parties have appeared for the purpose of litigating with the plaintiff, he has a right to discovery of documents by them. (*MacAlister* v. *The Bishop of Rochester*, W. N., 1880, 46.)

On the hearing of an application under this rule, there is no power to impose terms with regard to the payment of the costs of the party brought in. (*Yorkshire Waggon Co.* v. *Newport Coal Co.*, 5 Q. B. D., 268).

ORDER XVII.

JOINDER OF CAUSES OF ACTION.

What causes may be joined. 1. Subject to the following rules, the plaintiff may unite in the same action and in the same statement of claim several causes of action, but if it appear to the Court or a Judge that any such causes of action cannot be conveniently tried or disposed of together, the Court or Judge may order separate trials of any of such causes of action to be had, or may make such other order as may be necessary or expedient for the separate disposal thereof.

Before the Judicature Act, inconsistent and alternative relief would not have been allowed to have been claimed in a bill in Chancery, but by this rule a plaintiff is enabled to do so subject to the question of convenience at trial. (*Bagot* v. *Easton*, 7 Ch. D. 1; *Child* v. *Stenning*, 5 Ch. D. 695.) See further, Order XVI., Rule 3, *note*, *ante*.

Recovery of land. 2. No cause of action shall, unless by leave of the Court or a Judge, be joined with an action for the recovery of land, except claims in respect of mesne profits or arrears of rent in respect of the premises claimed, or any part thereof, and damages for breach of any contract under which the same or any part thereof are held.

Such application must be made prior to the service of the writ. (*Pilcher* v. *Hinds*, 27 W. R. 787.) The better opinion seems to be that an action to establish a title to land is not an action for the recovery of land within this rule. (*Gledhill* v. *Hunter*, 28 W. R. 530; *Whetstone* v. *Dewis*, 1 Ch. D. 99.)

An action for foreclosure is not an action for recovery of land within the meaning of the rule. (*Tawell* v. *The Slate Co.*, 3 Ch. D. 629.) Foreclosure excepted.

Leave will also be given to join an action for delivery up of a deed relating to the land, and for the recovery of personal estate comprised in it. (*Cook* v. *Enchmarch*, 2 Ch. D. 111.)

A claim for a receiver may be joined. (*Allen* v. *Kennet*, 24 W. R. 845.) For administration of the estate part of which was sought to be recovered (*Kitching* v. *Kitching*, 24 W. R. 901). A re-conveyance of the property (*Manisty* v. *Kenealy*, 24 W. R. 918).

3. Claims by a trustee in bankruptcy as such shall not, unless by leave of the Court or a Judge, be joined with any claim by him in any other capacity. Trustee of bankrupt.

4. Claims by or against husband and wife may be joined with claims by or against either of them separately. Husband and wife.

5. Claims by or against an executor or administrator as such may be joined with claims by or against him personally, provided the last-mentioned claims are alleged to arise with reference to the estate in respect of which the plaintiff or defendant sues or is sued as executor or administrator. Executor.

When the plaintiff sued in her own right, the defendant was not allowed to set up by way of counter claim, a claim against her as executrix. The rule does not apply to defendants. (*Macdonald* v. *Carington*, 4 C. P. D. 28.)

6. Claims by plaintiffs jointly may be joined with claims by them or any of them separately against the same defendant. Joint and several claims.

As to plaintiffs claiming relief jointly, severally, or in the alternative, see Order XVI., Rule 1, *ante*, and note thereto.

7. The last three preceding Rules shall be subject to Rule 1 of this Order, and to the Rules hereinafter contained. Qualification of last rules.

8. Any defendant alleging that the plaintiff has united in the same action several causes of action which cannot be conveniently disposed of in one action, may at any time apply to the Court or a Judge for an order confining the action to such of the causes of action as may be conveniently disposed of in one proceeding. Defendant may apply to sever.

9. If, on the hearing of such application as in the last preceding Rule mentioned, it shall appear to the Court or a Judge that the causes of action are such as cannot all be conveniently disposed of in one Judge may grant order on terms.

action, the Court or a Judge may order any of such causes of action to be excluded, and may direct the statement of claim, or, if no statement of claim has been delivered, the copy of the writ of summons, and the indorsement of claim on the writ of summons, to be amended accordingly, and may make such order as to costs as may be just.

An application under the last two rules in the Chancery Division is sometimes by summons, and sometimes by motion, when the case is considered sufficiently important. In the Common Law Divisions it is always by summons.

ORDER XVIII.

Actions by and against Lunatics and Persons of Unsound Mind.

May sue and be sued.

In all cases in which lunatics and persons of unsound mind not so found by inquisition might respectively before the passing of the Act have sued as plaintiffs or would have been liable to be sued as defendants in any action or suit, they may respectively sue as plaintiffs in any action by their committee or next friend in manner practised in the Court of Chancery before the passing of the said Act, and may in like manner defend any action by their committees or guardians appointed for that purpose.

The Court of Chancery has no power to appoint a guardian of the person to a lunatic not so found (*Re Bligh*, 12 Ch. D. 364); in the administration of the trusts of the property, it may give directions for his maintainance. (*Ibid. Vane* v. *Vane*, 2 Ch. D. 124.) A person who constitutes himself next friend for the purpose of bringing an action to protect the property of a lunatic not so found, does so at his own risk, and must be prepared to vindicate the propriety of his proceedings. (*Beall* v. *Smith*, L. R. 9 Ch. 85; *Jones* v. *Lloyd*, R. 18 Eq. 265.) It is irregular to file a bill by a next friend for the purpose of dealing with the real estate of a lunatic not so found. (*Halfhide* v. *Robinson*, L. R. 9 Ch. 373; *Herring* v. *Clark*, L. R. 4 Ch. 167.) When it is desired to appoint a new trustee in lieu of one who has become a lunatic, if he is within the jurisdiction, the Judges in Lunacy should make the order; but if out of the jurisdiction, the Chancery Division. (*Re Gardiner's Trusts*, 10 Ch. D. 29.) Service on the trustee of unsound mind is unnecessary. (*Re Green*, L. R. 10 Ch. 272.) The petition is properly presented in Lunacy as well as Chancery. (*Re Mason*, L. R. 10 Ch. 275.)

In the case of a lunatic, where no committee had been appointed, the Court directed service on the keeper of the asylum. (*Than* v. *Smith*, 27 W. R. 617.)

If a committee be appointed during the action, he should be made a party under Order L. 4. (*Green* v. *Pratt* 41 L. T. 30.)

ORDER XIX.

PLEADING GENERALLY.

Abolition of former rules.

1. The following rules of pleading shall be substituted for those heretofore used in the High Court of Chancery and in the Courts of Common Law, Admiralty, and Probate.

By the interpretation clause of the Act of 1873, sec. 100. "Pleading" includes any "petition or summons."

Pleadings, general outline of.

2. Unless the defendant in an action at the time of his appearance shall state that he does not require the delivery of a statement of complaint, the plaintiff shall within such time and in such manner as hereinafter prescribed, deliver to the defendant after his appearance a statement of his complaint and of the relief or remedy to which he claims to be entitled. The defendant shall within such time and in such manner as hereinafter prescribed deliver to the plaintiff a statement of his defence, set-off, or counter-claim (if any), and the plaintiff shall in like manner deliver a statement of his reply (if any) to such defence, set-off, or counter claim. Such statements shall be as brief as the nature of the case will admit, and the Court in adjusting the costs of the action shall inquire at the instance of any party into any unnecessary prolixity, and order the costs occasioned by such prolixity to be borne by the party chargeable with the same.

Plaintiff is entitled to reply by traverse or confession and avoidance, or both combined. (*Hall* v. *Eve*, 4 Ch. D. 341.)

Undue prolixity will be a ground for having the pleading struck out. (*Davy* v. *Garrett*, 7 Ch. D. 473.)

The rule of the Supreme Court (costs) which applies to this is 18 of Order VI., *post*.

As to variance in the reply, see *Breslauer* v. *Barwick*, 24 W.R. 901, in note to Rule 19, *post*.

Counter-claim.

3. A defendant in an action may set-off, or set up, by way of counter-claim against the claims of the plaintiff, any right or claim, whether such set-off or counter-claim sound in damages or not, and such set-off or counter-claim shall have the same effect as a statement of claim in a cross action, so as to enable the Court to pronounce a final judgment in the same action, both on the original and on the cross claim. But the Court or a Judge may, on the application of the plaintiff before trial, if in the opinion of the Court,

or Judge such set-off or counter-claim cannot be conveniently disposed of in the pending action, or ought not to be allowed, refuse permission to the defendant to avail himself thereof.

Where the Judge has refused permission the Court will not interfere except in a very strong case. (*Huggons* v. *Tweed*, 10 Ch. D. 359.

In the Chancery Division this application may be made on motion. (*Naylor* v. *Farrer*, W. N. 1878, 187.)

Specific. The counter-claim must be as specific, as the statement of claim in a cross action. (*Holloway* v. *York*, 25 W. R. 627; W. N. 1877, 112.

It must not contain a claim for damages accrued after the date of the writ. (*The Original Hartlepool Co.* v. *Gibb*, 5 Ch. D. 713.)

When there is a claim and counter-claim, the effect is similar to where there were cross actions, which the parties had agreed should be tried together. (*Mostyn* v. *West Mostyn Coal Co.*, 1 C. P. D. 150.)

Where the cause of action in a counter-claim was not sufficiently connected with that of the plaintiff's claim, the Court refused to allow their being tried together. (*Rotherham* v. *Priest*, 28 W. R. 277; and see *Naylor* v. *Farrer*, W. N. 1878, 187.) Where Jessel, M. R., refused to allow the defendant to avail himself of a counter-claim, on the ground that it was quite unconnected with the action, and could not be conveniently disposed of in it.

Separate counter-claims. When two plaintiffs sue for a joint claim, the defendant may set up separate counter-claims against each, sounding in damages. (*Manchester and Lincolnshire Railway Co.* v. *Brooks*, 2 Ex. D. 243.) But he may not set up a counter-claim against a co-defendant. (*Warner* v. *Twining*, 24 W. R. 536.) Relief may be claimed against a co-defendant under Order XVI., Rule 17, but not by counter-claim. (*Furness* v. *Booth*, 4 Ch. 586.)

Where a plaintiff sues as an assignee of a chose in action, the defendant may set up by way of counter-claim any set off, whether sounding in damages or not, which he would have been able to set off against the assignor. Provided it is such a claim as would be entitled in equity to priority over the right of the assignee. He should plead that the plaintiff is only entitled to the balance (if any), after deducting all that ought to be deducted in respect of the same. (*Young* v. *Kitchin*, 3 Ex. D. 127.)

Infant. A debt contracted during infancy cannot be set off. (*Rawley* v. *Rawley*, 1 Q. B. D. 460.)

In *Newell* v. *The Provincial Bank of England*, defendant was not allowed to set up a counter-claim on a promissory note, which matured after the intestate's death, the estate being in the course of administration in the Chancery Division. (1 C. P. D. 496.)

Costs. The costs of an unsuccessful petition for an adjudication of bankruptcy, founded on a debt for which judgment had been obtained in the Queen's Bench Division, cannot be set off against the costs of an unsuccessful application in the Queen's Bench Division, to set aside this judgment. The Court of Chancery never allowed such a set off, and the Bankruptcy Court follows the practice. (*Ex parte Griffin, Re Adams*, W. N. 1880, 42.)

A County Court judgment may be set off against the judgment of a superior Court. (*Sandys* v. *Louis*, W. N. 1875, 249.)

The County Court Act, 1867, sec 5, does not apply to counter-claims; so where defendant proved a counter-claim for 10*l.* he was held entitled to his costs of proving. (*Blake* v. *Appleyard*, 3 Ex. D. 195; *Staples* v. *Young*, 2 Ex. D. 324.)

When both claim and counter-claim are dismissed with costs, the defendant gets the general cost of the action, the plaintiff only the amount by which the costs have been increased by the counter-claim. (*Saner* v. *Bilton*, 11 Ch. D. 416.)

To a claim by the assignee of a Policy of Marine Insurance, the insurers are not entitled to set off a debt incurred after the date of the assignment, as it is not a defence within the meaning of the 31 & 32 Vict. c. 86, s. 1. (*Pellas* v. *The Neptune Insurance Co.*, 5 C. P. D. 34.)

To contain what.

4. Every pleading shall contain as concisely as may be a statement of the material facts on which the party pleading relies, but not the evidence by which they are to be proved, such statement being divided into paragraphs, numbered consecutively, and each paragraph containing, as nearly as may be, a separate allegation. Dates, sums, and numbers shall be expressed in figures and not in words. Signature of counsel shall not be necessary. Forms similar to those in Appendix (C) hereto may be used.

A pleading should contain a statement of material facts, but not the conclusions of law to be drawn from those facts. "What were called the charging parts, which were merely the pleader's view of the equity, should be omitted." (Per Mellish, L. J., in *Watson* v. *Rodwell*, 45 L. J. Ch. 746; *Williamson* v. *L. & N. W. Railway Co.*, 12 Ch. D. 787.) In *Hanmer* v. *Flight*, 24 W. R. 346, plaintiff was allowed to sign judgment for a sum that appeared on the pleadings to be due, although it was not clear whether it was under a covenant to pay rent or for use and occupation.

Admissions.

The rule against pleading evidence applies equally to admissions. (*Davy* v. *Garrett*, 7 Ch. D. 473. 485.)

In an action for the recovery of land, in the possession of which the plaintiff has never been, the statement of claim must set out particularly all the material facts and the nature of the deeds on which he relies to prove his title (*Phillips* v. *Phillips*, 4 Q. B. D. 127; *Dawkins* v. *Lord Penrhyn*, 4 App. Cases, 59); and if he relies upon an equitable title, the various assurances through which he claims to be entitled. (*Sutcliffe* v. *James*, 27 W. R. 750.)

Counsel's signature.

Although not compulsory, it is usual in the Chancery Division for counsel to sign pleadings. This practice probably is due to some remarks made by Malins, V. C., in *Duckitt* v. *Jones*, 33 L. T. 777.

See observations as to striking out for prolixity, Order XXVII., Rule 1, and note thereto, *post*.

Printed, when. R.S.C. June, 1676.

5. Every pleading which shall contain less than ten folios of 72 words each (every figure being counted as one word) may be either printed or written, or partly printed or partly written, and every other

pleading, not being a petition or summons, shall be printed.

See R. S. C. (costs) Order V., *post.*

How delivered.

6. Every pleading or other document required to be delivered to a party, or between parties, shall be delivered in the manner now in use to the solicitor of every party who appears by a solicitor, or to the party if he does not appear by a solicitor, but if no appearance has been entered for any party, then such pleading or document shall be delivered by being filed with the proper officer.

A notice of motion for judgment is a document which may be delivered by filing it with the proper officer, as against a defendant who has not appeared in the action. (*Morton* v. *Miller*, 3 Ch. D. 516; *Parsons* v. *Harris*, 6 Ch. D. 694.)

If the defendant fail to appear, it is unnecessary to file the notice with the officer. (*Whitaker* v. *Thurston*, W. N. 1876, 232.)

A defendant having become bankrupt after service of notice of trial, an order of revivor was made against his trustee and served on him. The trustee did not enter an appearance. Notice was served on him that the action was restored to the paper for trial, but he did not appear at the trial. Held that the plaintiff need not file the pleadings, or a notice of motion for judgment under this rule. (*Charlton* v. *Dickie*, 13 Ch. D. 160.)

How marked.

7. Every pleading in an action shall be delivered between parties, and shall be marked on the face with the date of the day on which it is delivered, and with the reference to the letter and number of the action, the Division to which and the Judge (if any) to whom the action is assigned, the title of the action, the description of the pleading, and the name and place of business of the solicitor and agent, if any, delivering the same, or the name and address of the party delivering the same if he does not act by a solicitor.

For Forms of pleadings, see Appendix (C), *post.*

Specific statement of relief claimed.

8. Every statement of claim shall state specifically the relief which the plaintiff claims, either simply or in the alternative, and may also ask for general relief. And the same rule shall apply to any counter-claim made or relief claimed by the defendant, in his statement of defence. If the plaintiff's claim be for discovery only the statement of claim shall show it.

If the statement of facts show that a document ought to be rectified, the Court will treat it as rectified, although this has not been claimed in the prayer. (*Breslauer* v. *Barwick*, 24 W. R., 901.)

Separation of distinct claims or defences.

9. Where the plaintiff seeks relief in respect of several distinct claims or causes of complaint founded upon separate and distinct facts, they shall be stated, as far as may be, separately and distinctly. And the same rule shall apply where the defendant relies upon several distinct grounds of defence, set-off, or counter-claim founded upon separate and distinct facts.

In an action for libel the defendant may plead together, justification, payment into Court, and the insertion of an apology. (*Hawkesley* v. *Bradshaw*, 5 Q. B. D. 302.)

Counter-claim, how set up.

10. Where any defendant seeks to rely upon any facts as supporting a right of set-off or counter-claim, he shall, in his statement of defence, state specifically that he does so by way of set-off or counter-claim.

A counter-claim must be as specific as a statement of claim in a cross action. (*Holloway* v. *York*, W. N. 1877, 112.) The forms given in Appendix C make a marked distinction between the portion of the pleadings, which properly belongs to the defence, and that which belongs to the counter-claim. They should not be amalgamated, as that would lead to an inconvenient practice. The pleader would omit to state the specific facts upon which he relies by way of counter-claim, and would take his chance of picking them out of the statement of defence at the trial. (*Crowe* v. *Barnicot*, 6 Ch. D, 753; *Lees* v. *Patterson*, 7 Ch. D. 868; *Hillman* v. *Mayhew*, 24 W. R. 485.)

Representative capacity, how to be traversed.

11. If either party wishes to deny the right of any other party to claim as executor or as trustee, whether in bankruptcy or otherwise, or in any representative or other alleged capacity, or the alleged constitution of any partnership firm, he shall deny the same specifically.

Probate actions.

12. In probate actions, where the plaintiff disputes the interest of the defendant, he shall allege in his statement of claim that he denies the defendant's interest.

Plea in abatement.

13. No plea or defence shall be pleaded in abatement.

New assignment, abolition of.

14. No new assignment shall hereafter be necessary or used. But everything which has heretofore been alleged by way of new assignment may hereafter be introduced by amendment of the statement of claim.

Recovery of land, plea of possession.

15. No defendant in an action for the recovery of land who is in possession by himself or his tenant need plead his title unless his defence depends on an equitable estate or right, or he claims relief upon any

equitable ground against any right or title asserted by the plaintiff. But, except in the cases hereinbefore mentioned, it shall be sufficient to state by way of defence that he is so in possession. And he may nevertheless rely upon any ground of defence which he can prove, except as hereinbefore mentioned.

Not guilty by statute.

16. Nothing in these rules contained shall affect the right of any defendant to plead not guilty by statute. And every defence of not guilty by statute shall have the same effect as a plea of not guilty by statute has heretofore had. But if the defendant so plead he shall not plead any other defence without the leave of the Court or a Judge.

By various statutes defendants have been granted the privilege, in cases coming within their operation, to plead the general issue of not guilty, and under that pleading set up special defences which would otherwise require to have been pleaded. A collection of these statutes is subjoined:—

Constables.—Borough, 5 & 6 Wm. 4, c. 76, s. 136; County, 2 & 3 Vict. c. 93, s. 8; Metropolitan, 10 Geo. 4, c. 44, s. 4; Parish, 5 & 6 Vict. c. 109, s. 15; Special, 1 & 2 Wm. 4, c. 41, s. 5.
County Courts.—Persons acting under, 15 & 16 Vict. c. 54, s. 6.
Coining—24 & 25 Vict. c. 99, s. 33.
Highways.—5 & 6 Wm. 4, c. 50, s. 109.
Landlords.—Persons acting under, 11 Geo. 2, c. 19, s. 21.
Larceny Act.—24 & 25 Vict. c. 96, s. 113.
Local and Personal Acts, benefit where given by, repealed.—5 & 6 Vict. c. 97, s. 3.
Malicious Injuries.—24 & 25 Vict. c. 97, s. 71.
Metropolis.—Building Act, 18 & 19 Vict. c. 122, s. 108; Management, 25 & 26 Vict. c. 102, s. 106; Police Magistracy, 2 & 3 Vict. c. 71, s. 55.
Penal Statute, persons sued on.—21 Jac. I. c. 4, s. 4.
Prisons.—28 & 29 Vict. c. 126, s. 49.
Public Officers.—42 Geo. 3, c. 85, s. 6.

Where the section of any of the statutes mentioned above incorporates the provisions of a previous Act, both should be mentioned in the plea. In addition to the above, there are some other statutes containing a similar provision, but not of the same importance.

A *bonâ fide* belief that a person is acting under a statute may protect him if there be any reasonable foundation for such belief. (*Agnew* v. *Jobson*, 47 L. J. M. C. 67.)

Under some of these statutes defendant is also entitled to notice of action.

Allegations not denied are deemed to be admitted.

17. Every allegation of fact in any pleading in an action, not being a petition or summons, if not denied specifically or by necessary implication, or stated to be not admitted in the pleading of the opposite party, shall be taken to be admitted except

as against an infant, lunatic, or person of unsound mind not so found by inquisition.

See note to Rule 20, *post.*

Issues, how to be raised.

18. Each party in any pleading, not being a petition or summons, must allege all such facts not appearing in the previous pleadings as he means to rely on, and must raise all such grounds of defence or reply, as the case may be, as if not raised on the pleadings would be likely to take the opposite party by surprise, or would raise new issues of fact not arising out of the pleadings, as, for instance, fraud, or that any claim has been barred by the Statute of Limitations or has been released.

A claim against a person acting in a fiduciary capacity on the footing of having made wilful default, may be entertained either at the hearing or the trial of the action, or at any subsequent stage, provided that it has been alleged and a case made for it on the pleadings. (*Barber* v. *Mackrell*, 12 Ch. D. 538; *Job* v. *Job*, 6 Ch. D. 562; *Mayer* v. *Murray*, 8 Ch. D. 424.

In actions for the recovery of land the plaintiff has to state his title—the title upon which he means to rely; therefore, if on the face of the pleadings the plaintiff states that the period allowed by the statute has expired within which he must make his claim, he states in law that his title is extinguished, unless he can bring himself within some of the exceptions, and the statement of claim will be bad on demurrer. (*Dawkins* v. *Lord Penrhyn*, 4 App. Cases, 59.) And there is no analogy in this case to pleading the Statute of Frauds or the Statute of Limitations in personal actions. (*Ibid.*) The contrary was held by Malins, V.C., in *Noyes* v. *Crawley*, 10 Ch. D. 31.

When the defendant simply stated that he "put the plaintiffs to the proof of the several allegations in their statement of claim," it was held insufficient, and that they were entitled to judgment without adducing any evidence in support of their case. (*Harris* v. *Gamble*, 7 Ch. D. 877; and see *Rutter* v. *Tregent*, 41 L. T. 16; 12 Ch. D. 758.

Departure in pleading.

19. No pleading, not being a petition or summons, shall, except by way of amendment, raise any new ground of claim or contain any allegation of fact inconsistent with the previous pleadings of the party pleading the same.

Where a statement or claim alleged a contract between A. and B., and the reply set forth that although on the face of it, it appeared a contract between A. and C., yet in reality it was a contract between A. and B., as the name of C. was placed in the body of the contract for that of B. by mutual mistake, held no departure. A second pleading must add some fact to those contained in the first, in support of and not in contradiction to it. (*Breslauer* v. *Barwick*, 24 W. R. 901.) It must not set up fresh claims for damages. (*Williamson* v. *L. & N. W. Ry.*, 12 Ch. D. 787.)

To a defence of coverture it is no departure to reply that plaintiff is unaware of the coverture, that defendant had obtained credit by representing herself as entitled to an annuity, and that in point of fact she has an annuity under a separation deed. (*Collette* v. *Dickinson*, 26 W. R. 403.

Specific denial necessary.

20. It shall not be sufficient for a defendant in his defence to deny generally the facts alleged by the statement of claim, or for a plaintiff in his reply to deny generally the facts alleged in a defence by way of counter-claim, but each party must deal specifically with each allegation of fact of which he does not admit the truth.

It is irregular for the plaintiffs to reply to the allegations of the defendant's counter-claim by a simple joinder of issue. The allegations in the counter-claim should be specifically dealt with. (*Benbow* v. *Low*, 13 Ch. D. 553.) *Rolfe* v. *Maclaren*, 3 Ch. D. 106, has been quoted as affirming the contrary: but on consideration of the judgment it seems to have gone on the special circumstances of the case. The whole object of pleadings is to bring the parties to an issue, and the meaning of the Rules of Order XIX. was to prevent the issue being enlarged, which would prevent either party from knowing when the cause came on for trial what the real point to be discussed and decided was. (Jessel, M. R., in *Thorp* v. *Holdsworth*, 3 Ch. D. 639.) These observations seem peculiarly applicable to Rules 17, 20, and 22. Where at the trial of an action the Judge who tries the case is of opinion that any issue is not sufficiently or specifically raised by the pleadings, it is a matter entirely in his discretion whether a proper case for amendment has been made out. "The Court," says James, L. J., "ought to be very chary in interfering." (*Byrd* v. *Nunn*, 7 Ch. D. 284.)

Joinder of issue.

21. Subject to the last preceding rule, the plaintiff by his reply may join issue upon the defence, and each party in his pleading, if any, subsequent to reply, may join issue upon the previous pleading. Such joinder of issue shall operate as a denial of every material allegation of fact in the pleading upon which issue is joined, but it may except any facts which the party may be willing to admit, and shall then operate as a denial of the facts not so admitted.

Denial must not be evasive.

22. When a party in any pleading denies an allegation of fact in the previous pleading of the opposite party, he must not do so evasively, but answer the point of substance. Thus, if it be alleged that he received a certain sum of money, it shall not be sufficient to deny that he received that particular amount, but he must deny that he received that sum or any part thereof, or else set out how much he received. And so when a matter of fact is alleged with divers

circumstances, it shall not be sufficient to deny it as alleged along with those circumstances, but a fair and substantial answer must be given.

If the answer be not considered substantial, the party shall have leave to amend unless he has been guilty of *mala fides*, or that the other side cannot be restored to his former or an equally good position. (*Tildesley* v. *Harper*, 10 Ch. D. 393.)

Illegality to be specially pleaded.

23. When a contract is alleged in any pleading, a bare denial of the contract by the opposite party shall be construed only as a denial of the making of the contract in fact, and not of its legality or insufficiency in law, whether with reference to the Statute of Frauds or otherwise.

A defendant must not only plead the statute, but must set out facts which will bring his case within it. (*Pullen* v. *Snelus*, 48 L. J. 394; *Clarke* v. *Callow*, 46 L. J. 53; *Wake'ee* v. *Davis*, 25 W. R. 60. And see the observations of Cairns, L. C., in *Dawkins* v. *Lord Penrhyn*, in 4 App. Cases 59, note to Rule 18, *ante*.

Effect of documents may be staed.

24. Wherever the contents of any document are material, it shall be sufficient in any pleading to state the effect thereof as briefly as possible, without setting out the whole or any part thereof unless the precise words of the document or any part thereof are material.

Malice, fraud.

25. Wherever it is material to allege malice, fraudulent intention, knowledge, or other condition of the mind of any person, it shall be sufficient to allege the same as a fact without setting out the circumstances from which the same is to be inferred.

Notice, how alleged.

26. Wherever it is material to allege notice to any person of any fact, matter, or thing, it shall be sufficient to allege such notice as a fact, unless the form or the precise terms of such notice be material.

Contract implied from letters or conversations.

27. Wherever any contract or any relation between any persons does not arise from an express agreement, but is to be implied from a series of letters or conversations, or otherwise from a number of circumstances, it shall be sufficient to allege such contract or relation as a fact, and to refer generally to such letters, conversations, or circumstances without setting them out in detail. And if in such case the person so pleading desires to rely in the alternative upon more contracts or relations than one as to be implied from such circumstances, he may state the same in the alternative.

Presumptions of law.

28. Neither party need in any pleading allege any matter of fact which the law presumes in his favour or as to which the burden of proof lies upon the other side, unless the same has first been specifically denied.

[*E.g.*—Consideration for a bill of exchange where the plaintiff sues only on the bill, and not for the consideration as a substantive ground of claim.]

Proceedings in district registry.

29. Where an action proceeds in a district registry all pleadings and other documents required to be filed shall be filed in the district registry.

R.S.C., March, 1879.

29*a*. When a cause in the Chancery Division is proceeding in a district registry, all certificates of the chief clerk and taxing masters and all affidavits and other documents (required to be filed) used in London before the Judge in Chambers, or before any taxing master or referee of the Court, and not already filed in the district registry, shall be filed in the same office as they would have been filed in if the proceedings had originally commenced in London: and if the Court or Judge shall so direct, office copies thereof shall be transmitted to the district registry.

Preliminary Act in Admiralty actions.

30. In actions for damage by collision between vessels, unless the Court or a Judge shall otherwise order, each solicitor shall, before any pleading is delivered, file with the proper officer a document to be called a Preliminary Act, which shall be sealed up and shall not be opened until ordered by the Court or a Judge, and which shall contain a statement of the following particulars:—

(*a.*) The names of the vessels which came into collision and the names of their masters.
(*b.*) The time of the collision.
(*c.*) The place of the collision.
(*d.*) The direction of the wind.
(*e.*) The state of the weather.
(*f.*) The state and force of the tide.
(*g.*) The course and speed of the vessel when the other was first seen.
(*h.*) The lights, if any, carried by her.
(*i.*) The distance and bearing of the other vessel when first seen.
(*k.*) The lights, if any, of the other vessel which were first seen.
(*l.*) Whether any lights of the other vessel, other

than those first seen, came into view before the collision.

(*m.*) What measures were taken, and when, to avoid the collision.

(*n.*) The parts of each vessel which first came into contact.

If both solicitors consent, the Court or a Judge may order the preliminary acts to be opened and the evidence to be taken thereon without its being necessary to deliver any pleadings.

In actions against the shipowner, by the owner of the cargo, this rule does not apply. (*The John Boyne*, 25 W. R. 756.) As to the practice in Vice-Admiralty Courts, see *The Norma*, 35 L. T. 418.

ORDER XX.

Pleading Matters arising pending the Action.

Before pleading delivered.

1. Any ground of defence which has arisen after action brought, but before the defendant has delivered his statement of defence, and before the time limited for his doing so has expired, may be pleaded by the defendant in his statement of defence, either alone or together with other grounds of defence. And if, after a statement of defence has been delivered, any ground of defence arises to any set-off or counter-claim alleged therein by the defendant, it may be pleaded by the plaintiff in his reply, either alone or together with any other ground of reply.

A counter-claim arising after action brought should be so stated in the pleadings. (*Ellis* v. *Munson*, 35 L. T. 585.)

After pleading delivered.

2. Where any ground of defence arises after the defendant has delivered a statement of defence, or after the time limited for his doing so has expired, the defendant may, and where any ground of defence to any set-off or counter-claim arises after reply, or after the time limited for delivering a reply has expired, the plaintiff may, within eight days after such ground of defence has arisen, and by leave of the Court or a Judge, deliver a further defence or further reply, as the case may be, setting forth the same.

Confession of plea.

3. Whenever any defendant, in his statement of defence, or in any further statement of defence as in the last rule mentioned, alleges any ground of defence which has arisen after the commencement of the action, the plaintiff may deliver a confession of such

Puis darrein continuance.

defence, which confession may be in the Form No. 2 in Appendix (B) hereto, with such variations as circumstances may require, and he may thereupon sign judgment for his costs up to the time of the pleading of such defence unless the Court or a Judge shall, either before or after the delivery of such confession, otherwise order.

In *Foster* v. *Gamgee*, 1 Q. B. D. 666, the defendant pleaded the bankruptcy of the plaintiff; it was held that the plaintiff was entitled to his costs under this rule up to the plea.

A plea of payment after action brought is not a "defence" to which this rule applies. (*Callander* v. *Hawkins*, 2 C. P. D. 592.)

Pleading matter after action brought must be so stated. (*Ellis* v. *Munson*, 35 L. T. 585).

ORDER XXI.

Statement of Claim.

Deliver of

1. Subject to Rules 2 and 3 of this Order, the delivery of statements of claim shall be regulated as follows:—

(*a.*) If the defendant shall not state that he does not require the delivery of a statement of claim, the plaintiff shall, unless otherwise ordered by the Court or a Judge, deliver it within six weeks from the time of the defendant's entering his appearance.

(*b.*) The plaintiff may, if he think fit, at any time after the issue of the writ of summons, deliver a statement of claim, with the writ of summons or notice in lieu of writ of summons, or at any time afterwards, either before or after appearance, and although the defendant may have appeared and stated that he does not require the delivery of a statement of claim: Provided that in no case where a defendant has appeared shall a statement be delivered more than six weeks after the appearance has been entered unless otherwise ordered by the Court or a Judge.

(*c.*) Where a plaintiff delivers a statement of claim without being required to do so, the Court or a Judge may make such order as to the costs occasioned thereby as shall seem just, if it appears that the delivery of a statement of claim was unnecessary or improper.

In Vice-Chancellor Malins' Court. In administration actions where there is an intestacy, or where the plaintiffs are creditors, and therefore presumably the only thing to be done is to ascertain the debts and distribute the assets: no statement of claim need be prepared. But where there are parties interested under a will, and where it is desired to take a decree, short in the first instance, a statement of claim ought to be put in. (*Breton* v. *Mockett*, W. N. 1875, 255.)

Similarly in an action to have the trust of an indenture carried out, although the defendant had stated that he did not require one. (*Boyes* v. *Cook*, W. N. 1876, 28.) These two principles seem to regulate the present practice, and *Green* v. *Coleby*, 1 Ch. D. 693, and *Taylor* v. *Duckett*, W. N. 1875, 193, when carefully considered, do not appear to contain anything to the contrary.

If the plaintiff does not deliver his statement of claim within the six weeks allowed, the defendant may move under Order XXIX. Rule 1, to have the action dismissed for want of prosecution.

In Probate actions.

2. In Probate actions the plaintiff shall, unless otherwise ordered by the Court or a Judge, deliver his statement of claim within six weeks from the entry of appearance by the defendant, or from the time limited for his appearance, in case he has made default; but where the defendant has appeared the plaintiff shall not be compelled to deliver it until the expiration of eight days after the defendant has filed his affidavit as to scripts.

In Admiralty actions.

3. In Admiralty actions *in rem* the plaintiff shall, within twelve days from the appearance of the defendant, deliver his statement of claim.

Notice, in lieu of.

4. Where the writ is specially indorsed, and the defendant has not dispensed with a statement of claim, it shall be sufficient for the plaintiff to deliver as his statement of claim a notice to the effect that his claim is that which appears by the indorsement upon the writ, unless the Court or a Judge shall order him to deliver a further statement. Such notice may be either written or printed or partly written and partly printed, and may be in the Form No. 3 in Appendix (B) hereto, and shall be marked on the face in the same manner as is required in the case of an ordinary statement of claim. And when the plaintiff is ordered to deliver such further statement it shall be delivered within such time as by such order shall be directed, and if no time be so limited then within the time prescribed by Rule 1 of this Order

Where an application has been made under Order XIV. Rule 1, and the Master has indorsed the summons "no order," or has given express leave to defend, the defence must be put in within eight days under Order XXII. Rule 3. (*Margate Pier Co.* v. *Perry*, W. N. 1876, 52).

This notice will make the indorsement on the writ equivalent to a statement of claim, and defendant is entitled to demur to it. (*Robertson* v. *Howard*, 3 C. P. D. 280).

ORDER XXII.

Defence.

Time for delivery.

1. Where a statement of claim is delivered to a defendant he shall deliver his defence within eight days from the delivery of the statement of claim, or from the time limited for appearance, whichever shall be last, unless such time is extended by the Court or a Judge.

It is irregular to extend the time by consent without an order for that purpose. Nevertheless, where there were several defendants, of whom one had obtained an extension in this manner without the knowledge of his co-defendants, Jessel, M. R., refused to consider the pleadings closed, and allow them to have the action dismissed for want of prosecution under Order XXXVI., Rule 4*a*. (*Ambroise* v. *Evelyn*, 11 Ch. D. 759).

Where the defendant obtains an order for extending his time for "delivery of defence," if the plaintiff wish to prevent him from demurring, he should have the order framed as in *Hodges* v. *Hodges*, 2 Ch. D. 112.

For defences arising during the pendency of the action, see Order XX., *ante*.

Where claim not required.

2. A defendant who has appeared in an action and stated that he does not require the delivery of a statement of claim, and to whom a statement of claim is not delivered, may deliver a defence at any time within eight days after his appearance, unless such time is extended by the Court or a Judge.

In *Hooper* v. *Giles*, W. N. 1876, 10, Lindley, J., in Chambers, has held that a defendant is not bound to deliver any defence when he has given notice under this rule and no statement of claim has been delivered. With regard to this, it is to be observed it does not follow that because the defendant is well aware of what the plaintiff's cause of action is, that conversely the plaintiff should know what the defence is which he has to meet. It will be safest therefore in case there is any doubt as to the nature of the defence about to be set up, for the plaintiff to deliver a statement of claim after the expiration of the 8 days allowed.

Leave to defend.

3. Where leave has been given to a defendant to defend under Order XIV., Rule 1, he shall deliver his defence, if any, within such time as shall be limited by the order giving him leave to defend, or if no time is thereby limited, then within eight days after the order.

Where a master has indorsed the summons "No order," it is equivalent to giving leave to defend. (*Margate Pier Co.* v. *Perry*, W. N. 1876, 52.)

Improper failure to admit.

4. Where the Court or a Judge shall be of opinion that any allegations of fact denied or not admitted by the defence ought to have been admitted, the Court may make such order as shall be just with respect to any extra costs occasioned by their having been denied or not admitted.

Party brought in by counter-claim.

5. Where a defendant by his defence sets up any counter-claim which raises questions between himself and the plaintiff, along with any other person or persons, he shall add to the title of his defence a further title similar to the title in a statement of complaint, setting forth the names of all the persons who, if such counter-claim were to be enforced by cross action, would be defendants to such cross action, and shall deliver his defence to such of them as are parties to the action within the period within which he is required to deliver it to the plaintiff.

It is not necessary that the questions mentioned in this rule should arise out of the same cause of action. If the questions raised in the counter-claim would have formed a good cause of action in a cross action, brought by the actual defendant against the actual plaintiff and some other person, that person may be made party to the existing suit by counter-claim. (*Turner* v. *Hednesford Gas Co.*, 3 Ex. D. 145; *Dear* v. *Sworder*, 4, Ch. D. 476.)

A counter-claim must claim relief against the plaintiff, and he must be a party to it. (*Harris* v. *Gamble*, 6 Ch. D. 748.)

The defendant must not bring a third party before the Court, unless the relief claimed against him is connected with the subject-matter of the action. (*Padwick* v. *Scott*, 2 Ch. D. 736.)

And further as to bringing in third parties, see Order XVI., Rules 17–21, *ante*.

A counter-claim should state that it is so pleaded, Order XIX., Rule 10, *ante*.

Third party, how summoned.

6. Where any such person as in the last preceding Rule mentioned is not a party to the action, he shall be summoned to appear by being served with a copy of the defence, and such service shall be regulated by the same Rules as are hereinbefore contained with respect to the service of a writ of summons, and every defence so served shall be indorsed in the Form No. 4 in Appendix (B.) hereto or to the like effect.

Appearance by third party.

7. Any person not a defendant to the action, who is served with a defence and counter-claim as aforesaid, must appear thereto as if he had been served with a writ of summons to appear in an action.

Reply by third party.

8. Any person named in a defence as a party to a counter-claim thereby made may deliver a reply within the time within which he might deliver a defence if it were a statement of claim.

Counter-claim may be excluded.

9. Where a defendant by his statement of defence sets up a counter-claim, if the plaintiff or any other person named in manner aforesaid as party to such counter-claim contends that the claim thereby raised ought not to be disposed of by way of counter-claim, but in an independent action, he may at any time before reply, apply to the Court or a Judge for an order that such counter-claim may be excluded, and the Court or a Judge may, on the hearing of such application, make such order as shall be just.

This is a matter chiefly in the discretion of the Judge. (*Huggons* v. *Tweed*, 10 Ch. D. 359.)

Where a husband has been made a mere formal defendant in an action against the wife's separate estate, he may take advantage of his position to put in a counter-claim on his own account, raising a perfectly different cause of action (*Hodson* v. *Mochi*, 8 Ch. D. 569), provided of course that it can be conveniently disposed of in the same action. (See Order XXII., Rule 5, and XIX. 3, and notes thereto, *ante*.)

Defendant may have judgment for balance.

10. Where in any action a set-off or counter-claim is established as a defence against the plaintiff's claim, the Court may, if the balance is in favour of the defendant, give judgment for the defendant for such balance, or may otherwise adjudge to the defendant such relief as he may be entitled to upon the merits of the case.

The "balance" here mentioned means the balance found to be due upon the hearing of the action. (*Rolfe* v. *Maclaren*, 3 Ch. D. 106.)

Probate actions.

11. In Probate actions the party opposing a will may, with his defence, give notice to the party setting up the will that he merely insists upon the will being proved in solemn form of law, and only intends to cross-examine the witnesses produced in support of the will, and he shall thereupon be at liberty to do so, and shall be subject to the same liabilities in respect of costs as he would have been under similar circumstances according to the practice of the Court of Probate.

ORDER XXIII.

Discontinuance.

By notice, before defence.

1. The plaintiff may, at any time before receipt of the defendant's statement of defence, or after the receipt thereof before taking any other proceeding in the action (save any interlocutory application), by notice in writing, wholly discontinue his action or withdraw any part or parts of his alleged cause of complaint, and thereupon he shall pay the defendant's costs of the action, or, if the action be not wholly discontinued, the defendant's costs occasioned by the matter so withdrawn. Such costs shall be taxed, and such discontinuance or withdrawal, as the case may be, shall not be a defence to any subsequent action. Save as in this Rule otherwise provided, it shall not be competent for the plaintiff to withdraw the Record or discontinue the action without leave of the Court or a Judge; but the Court or Judge may, before, or at, or after the hearing or trial, upon such terms as to costs, and as to any other action, and otherwise as may seem fit, order the action to be discontinued, or any part of the alleged cause of complaint to be struck out. The Court or a Judge may, in like manner, and with the like discretion as to terms, upon the application of the defendant, order the whole or any part of his alleged grounds of defence or counter-claim to be withdrawn or struck out, but it shall not be competent to a defendant to withdraw his defence, or any part thereof, without such leave.

By leave, after.

Defence may be withdrawn on terms.

A letter from plaintiffs' solicitors to defendants' solicitors, announcing that they are instructed to proceed no further, is sufficient notice of discontinuance. (*The Pomerania*, 39 L. T. 642.) Where the finding of an arbitrator substantially amounts to a verdict in favour of the defendant, he is entitled to judgment, and the plaintiff is not entitled to discontinue the action. (*Stahlschmidt* v. *Walford*, 4 Q. B. D. 217.) Nor is a plaintiff, who has obtained an interim injunction upon the usual undertaking as to damages, allowed to discontinue without paying the damages to which he has rendered himself liable. (*Newcomen* v. *Coulson*, 7 Ch. D. 764.) And where the plaintiffs abandoned their statement of claim, except with regard to two issues, it was held that the defendants were entitled to an actual and not to a future and contingent discontinuance of the action, as to all matters not covered by those issues. (*The Emma Silver Mining Co.* v. *Grant*, 11 Ch. D. 930.)

Withdrawal by consent. R.S.C. Dec. 1875.

2. When a cause has been entered for trial, it may be withdrawn by either plaintiff or defendant, upon producing to the proper officer a consent in writing, signed by the parties.

Costs. R.S.C., June, 1876.

2*a*. A defendant may sign judgment for the costs of an action if it is wholly discontinued, or for the costs occasioned by the matter withdrawn, if the action be not wholly discontinued.

ORDER XXIV.

Reply and Subsequent Pleadings.

Time for delivery.

1. A plaintiff shall deliver his reply, if any, within three weeks after the defence or the last of the defences shall have been delivered, unless the time shall be extended by the Court or a Judge.

Plaintiff is entitled to reply by traverse or confession and avoidance, or both combined. (*Hall* v. *Eve*, 4 Ch. D. 341.) It should not set up a fresh claim for damages. (*Williamson* v. *L. & N. W. Ry. Co.*, 12 Ch. D. 787.) And see Order XIX., Rule 19, *ante*, *note*.

Pleadings after reply.

2. No pleading subsequent to reply other than a joinder of issue shall be pleaded without leave of the Court or a Judge, and then upon such terms as the Court or Judge shall think fit.

Time for delivery.

3. Subject to the last preceding Rule, every pleading subsequent to reply shall be delivered within four days after the delivery of the previous pleading, unless the time shall be extended by the Court or a Judge.

ORDER XXV.

Close of Pleadings.

Joinder of issue.

As soon as either party has joined issue upon any pleading of the opposite party simply without adding any further or other pleading thereto, the pleadings as between such parties shall be deemed to be closed.

Pleadings may also be deemed to be closed by default under Order XXIX., Rule 12.

ORDER XXVI.

Issues.

Settlement of.

Where in any action it appears to a Judge that the statement of claim or defence or reply does not sufficiently define the issues of fact in dispute between the parties, he may direct the parties to prepare issues, and such issues shall, if the parties differ, be settled by the Judge.

ORDER XXVII.

Amendment of Pleadings.

General powers.

1. The Court or a Judge may, at any stage of the proceedings, allow either party to alter his statement of claim or defence or reply, or may order to be struck out or amended any matter in such statements respectively which may be scandalous, or which may tend to prejudice, embarrass, or delay the fair trial of the action, and all such amendments shall be made as may be necessary for the purpose of determining the real questions or question in controversy between the parties.

If a pleading be very prolix, and calculated to embarrass the opposite party, it will be ordered to be struck out, with liberty to put in a new one. (*Davy* v. *Garrett*, 7 Ch. D. 473; *Williamson* v. *London & North-Western Railway Co.*, 27 W. R. 724); or irrelevant or scandalous (*Cashin* v. *Craddock*, 3 Ch. D. 376; *Blake* v. *The Albion Life Assurance Co.*, 24 W. R. 677.)

The Court will not, as a rule, interfere with the discretion of the Judge. (*Golding* v. *The Wharton Saltworks Co.*, 1 Q. B. D. 374; *Watson* v. *Rodwell*, 3 Ch. D. 380.)

Matters of law.

Matters of law, which might be raised on demurrer, should not be pleaded, for they are liable to be struck out as embarrassing. *Stokes* v. *Grant*, 4 C. P. D. 25.)

In *Collette* v. *Goode*, 7 Ch. D. 842, Fry, J., refused to allow an amendment upon a state of facts first appearing at the trial, for the mere purpose of enabling the defendant to raise a purely technical objection to the plaintiff's title to sue.

Where an equitable defence was framed in much the same manner as an answer to a bill used to be drawn, the Court declined to strike it out as embarrassing though they considered it very prolix. "All we could do," says Grove, J., "would be to abbreviate the language and render it more concise. This form of pleading is useful before a Judge sitting alone, and although it may not be quite so convenient at a trial with a jury, still I cannot think it will prejudice the fair trial of the action." (*Heap* v. *Marris*, 2 Q. B. D. 630.)

Costs against next friend.

In an action by the wife against her husband for rectification of her marriage settlement, certain allegations in the statement of claim being held to be scandalous and irrelevant, they were ordered to be struck out, and the costs to be paid by the wife's next friend in the action. (*Coyle* v. *Cumming*, 27 W. R. 529.)

Accounts.

Where fraud is alleged in the accounts, the pleadings should contain specific statements of the falsifications. (*Mozley* v. *Cowie*, 47 L. J. Ch. 271.) In *Harbord* v. *Monk*, an order was made for further and better particulars of such charges, or that in default the paragraphs containing them be struck out. It was held an insufficient compliance with this order to state that all accounts were untrue, that the improper and excessive charges appeared in the accounts, and that the defendant was aware of them. (38 L. T. 411.)

Admissions.

If admissions are pleaded they will be struck out. (*Davy* v. *Garrett*, 7 Ch. D. 473; *Askew* v. *The North-Eastern Railway Co.*, W. N., 1875, 238.)

Close of pleadings.

In the *Chesterfield Co.* v. *Black*, 25 W. R. 409, Bacon, V.C., gave leave to amend the statement of claim after the close of the pleadings, and refused to enter into the consideration of the materiality of the proposed amendment.

Applications to be by summons.

Applications under this rule should be made by summons, and not by motion; if made by motion the costs given will not exceed those of a summons attended by counsel. (*Marriott* v. *Marriott*, 26 W. R. 416.)

As to setting up a new case, see *Cargill* v *Bower*, 4 Ch. D. 78; *Budding* v. *Murdock*, 1 Ch. D. 42; *King* v. *Corke*, 1 Ch. D. 57.

With the necessary sanction of the Attorney-General an action has been converted into an information and action. (*Caldwell* v *Pagham Harbour Co.*, 2 Ch. D. 221.)

Very wide powers are also conferred under sec. 24, sub-sec. 7, of the Act of 1873, and under Rule 6, *post*.

Without leave by plaintiff, when.

2. The plaintiff may, without any leave, amend his statement of claim once at any time before the expiration of the time limited for reply and before replying, or, when no defence is delivered, at any time before the expiration of four weeks from the appearance of the defendant who shall have last appeared.

As to amendment of defence, see *Boddy* v. *Wall*, Rule 5, *post*.

By defendant, when.

3. A defendant who has set up in his defence any set-off or counter-claim may, without any leave, amend such set-off or counter-claim at any time before the expiration of the time allowed him for pleading to the reply, and before pleading thereto, or in case there be no reply, then at any time before the expiration of twenty-eight days from the filing of his defence.

Disallowed, when.

4. Where any party has amended his pleading under either of the last two preceding Rules, the opposite party may, within eight days after the delivery to him of the amended pleading, apply to the Court or a Judge to disallow the amendment, or any part thereof, and the Court or Judge, may, if satisfied that the justice of the case requires it, disallow the same, or allow it subject to such terms as to costs or otherwise as may seem just.

Amendment of opposite party.

5. Where any party has amended his pleading under Rule 2 or 3 of this Order, the other party may apply to the Court or a Judge for leave to plead or amend his former pleading within such time and upon such terms as may seem just.

Where a plaintiff has amended his statement of claim after delivery of statement of defence, the defendant is entitled to choose whether he will obtain leave to amend his defence, or put in a new defence, or proceed with his original defence. If he

adopt the last course, the amendments in the statement of claim will be taken to be admitted, and the defence will stand as an answer *pro tanto*. (*Boddy* v. *Wall*, 7 Ch. D. 164.)

Application for leave in other cases.

6. In all cases not provided for by the preceding Rules of this Order, application for leave to amend any pleading may be made by either party to the Court or a Judge in Chambers, or to the Judge at the trial of the action, and such amendment may be allowed upon such terms as to costs or otherwise as may seem just.

Leave will be given to amend unless it will work some injustice to the other side. (*Tildesley* v. *Harper*, 10 Ch. D. 393; and see Order XIX., Rule 22, and Rule 1 of this Order.)

Failure to amend within time.

7. If a party who has obtained an order for leave to amend a pleading delivered by him does not amend the same within the time limited for that purpose by the order, or if no time is thereby limited, then within fourteen days from the date of the order, such order to amend shall, on the expiration of such limited time as aforesaid, or of such fourteen days, as the case may be, become *ipso facto* void, unless the time is extended by the Court or a Judge.

How to be made.

8. A pleading may be amended by written alterations in the pleading which has been delivered, and by additions on paper to be interleaved therewith if necessary, unless the amendments require the insertion of more than 144 words in any one place, or are so numerous, or of such a nature that the making them in writing would render the pleading difficult or inconvenient to read, in either of which cases the amendment must be made by delivering a print of the pleading as amended.

To be marked on pleading.

9. Whenever any pleading is amended, such pleading when amended shall be marked with the date of the order, if any, under which the same is so amended, and of the day on which such amendment is made, in manner following, viz.: "Amended day of ."

Delivery of amended pleading.

10. Whenever a pleading is amended, such amended pleading shall be delivered to the opposite party within the time allowed for amending the same.

R.S.C. Feb. 1876.

11. The Court, or a Judge, may, at any stage of the proceedings, allow the plaintiff to amend the writ of summons in such manner, and on such terms, as may seem just.

ORDER XXVIII.

DEMURRER.

Grounds for.

1. Any party may demur to any pleading of the opposite party, or to any part of a pleading setting up a distinct cause of action, ground of defence, set-off, counter-claim, reply, or as the case may be, on the ground that the facts alleged therein do not show any cause of action, or ground of defence to a claim or any part thereof, or set-off, or counter-claim, or reply, or as the case may be, to which effect can be given by the Court as against the party demurring.

Where a defendant sets up mere matters of law in his defence, they may be ordered to be struck out as embarassing. (*Stokes* v. *Grant*, 4 C. P. D. 25.)

A specially indorsed writ taken together with a notice in lieu of statement of claim under Order XXI. Rule 4, form a "pleading" which may be demurred to. (*Robertson* v. *Howard*, 3 C. P. D. 280.)

A party may demur to any portion of a pleading, provided it is clear that the portion demurred to shows no claim to any relief, whether expressly prayed for or not. (*Watson* v. *Hawkins*, 24 W. R. 884.) When a demurrer has been overruled the same point may be taken at the trial, and thus brought before the Court of Appeal. (*Johnasson* v. *Bonhote*, 2 Ch. D. 298.)

Must be specific.

2. A demurrer shall state specifically whether it is to the whole or to a part, and if so, to what part, of the pleading of the opposite party. It shall state some ground in law for the demurrer, but the party demurring shall not, on the argument of the demurrer, be limited to the ground so stated. A demurrer may be in the Form 28 in Appendix (C) hereto. If there is no ground, or only a frivolous ground of demurrer stated, the Court or Judge may set aside such demurrer, with costs.

As to when the Statute of Limitations may be raised by demurrer, see *Dawkins* v. *Lord Penrhyn* and *Noyes* v. *Crawley* Order XIX., Rule 18, *note*, *ante*.

In the Common Law Divisions this application is by summons; in the Chancery Division the same course may be followed, unless the importance of the case would seem to warrant it being by motion.

Delivery of.

3. A demurrer shall be delivered in the same manner and within ~~the~~ same time as any other pleading in the action.

Where a defendant has obtained an order extending his time to deliver his defence, he can demur at any time before its expiration. (*Hodges* v. *Hodges*, 2 Ch. D. 112.)

Demurrer and defence in one pleading.

4. A defendant desiring to demur to part of a statement of claim, and to put in a defence to the other part, shall combine such demurrer and defence in one pleading. And so in every case where a party entitled to put in a further pleading desires to demur to part of the last pleading of the opposite party he shall combine such demurrer and other pleading.

Leave to plead and demur to same matter.

5. If the party demurring desires to be at liberty to plead as well as demur to the matter demurred to, he may, before demurring apply to the Court or a Judge for an order giving him leave to do so; and the Court or Judge, if satisfied that there is reasonable ground for the demurrer, may make an order accordingly, or may reserve leave to him to plead after the demurrer is overruled, or may make such other order and upon such terms as may be just.

In the Court of Chancery it was almost a matter of course, after a demurrer had been argued and decided, and the party was desirous of putting in an answer, to allow it to be put in if it were at all plausible: this practice will now be followed in the High Court. (*Bell* v. *Wilkinson*, 26 W. R. 275.)

Entry for argument.

6. When a demurrer either to the whole or part of a pleading is delivered, either party may enter the demurrer for argument immediately, and the party so entering such demurrer shall on the same day give notice thereof to the other party. If the demurrer shall not be entered and notice thereof given within ten days after delivery, and if the party whose pleading is demurred to does not within such time serve an order for leave to amend, the demurrer shall be held sufficient for the same purposes and with the same result as to costs as if it had been allowed on argument.

This Order should be obtained by side bar motion.

Amendment while demurrer pending.

7. While a demurrer to the whole or any part of a pleading is pending, such pleading shall not be amended, unless by order of the Court or a Judge; and no such order shall be made except on payment of the costs of the demurrer.

Successful demurrer. Costs.

8. Where a demurrer to the whole or part of any pleading is allowed upon argument, the party whose pleading is demurred to shall, unless the Court otherwise order, pay to the demurring party the costs of the demurrer.

Successful demurrer to whole claim. Costs.

9. If a demurrer to the whole of a statement of claim be allowed, the plaintiff, subject to the power of the Court to allow the statement of claim to be amended, shall pay to the demurring defendant the costs of the action, unless the Court shall otherwise order.

Matter demurred to, to be deemed struck out.

10. Where a demurrer to any pleading or part of a pleading is allowed in any case not falling within the last preceding rule, then (subject to the power of the Court to allow an amendment) the matter demurred to shall as between the parties to the demurrer be deemed to be struck out of the pleadings, and the rights of the parties shall be the same as if it had not been pleaded.

Overruled. costs.

11. Where a demurrer is overruled the demurring party shall pay to the opposite party the costs occasioned by the demurrer, unless the Court shall otherwise direct.

Leave to plead over.

12. Where a demurrer is overruled the Court may make such order and upon such terms as to the Court shall seem right for allowing the demurring party to raise by pleading any case he may be desirous to set up in opposition to the mattter demurred to.

And see *Bell* v. *Wilkinson*, Rule 5, *ante*.

Form of.

13. A demurrer shall be entered for argument by delivering to the proper officer a memorandum of entry in the Form No. 29 in Appendix (C).

ORDER XXIX.

Default of Pleading.

Dismissal of action.

1. If the plaintiff, being bound to deliver a statement of claim, does not deliver the same within the time allowed for that purpose, the defendant may, at the expiration of that time, apply to the Court or a Judge to dismiss the action with costs, for want of prosecution; and on the hearing of such application the Court or Judge may, if no statement of claim have been delivered, order the action to be dismissed accordingly, or may make such other order on such terms as to the Court or Judge shall seem just.

On the hearing of such motion the Court will usually grant extension of time on payment of the costs. (*Higginbottom* v. *Aynsley*. 3 Ch. D. 288.)

When the plaintiff has become bankrupt, notice of the motion should be served upon the trustee. (*Wright* v. *The Swindon, &c., Ry. Co.*, 4 Ch. D. 164.)

By defendant in action for debt.

2. If the plaintiff's claim be only for a debt or liquidated demand, and the defendant does not, within the time allowed for that purpose, deliver a defence or demurrer, the plaintiff may, at the expiration of such time, enter final judgment for the amount claimed, with costs.

Where the defendant has given notice that he requires no statement of claim to be delivered, see *Hooper* v. *Giles*, Order XXII., Rule 2, *ante*).

If in an action on a replevin bond the plaintiff, instead of claiming damages, claims the amount for which the bond is given, and becomes entitled to judgment by default, his proper course is to enter final judgment under this rule, and not interlocutory judgment under Rule 4. (*Dix* v. *Groom*, 5 Ex. D. 91.)

The practice in Admiralty is not governed by this rule. (*The Sfactoria*, 2 P. D. 3.)

Default by one of several defendants.

3. When in any such action as in the last preceding rule mentioned there are several defendants, if one of them make default as mentioned in the last preceding rule, the plaintiff may enter final judgment against the defendant so making default, and issue execution upon such judgment without prejudice to his right to proceed with his action against the other defendants.

Unliquidated claim.

4. If the plaintiff's claim be for detention of goods and pecuniary damages, or either of them, and the defendant makes default as mentioned in Rule 2, the plaintiff may enter an interlocutory judgment against the defendant, and a writ of inquiry shall issue to assess the value of the goods and the damages, or the damages only, as the case may be. But the Court or a Judge may order that, instead of a writ of inquiry, the value and amount of damages, or either of them, shall be ascertained in any way in which any question arising in an action may be tried.

(See *Dix* v. *Groom*, Rule 2, *ante*.)

Default by one of several defendants.

5. When in any such action as in Rule 4 mentioned there are several defendants, if one of them make default as mentioned in Rule 2, the plaintiff may enter an interlocutory judgment against the defendant so making default, and proceed with his action against

the others. And in such case, damages against the defendant making default shall be assessed at the same time with the trial of the action or issues therein against the other defendants, unless the Court or a Judge shall otherwise direct.

Claim for debt and damages.

6. If the plaintiff's claim be for a debt or liquidated demand, and also for detention of goods and pecuniary damages, or pecuniary damages only, and the defendant makes default as mentioned in Rule 2, the plaintiff may enter final judgment for the debt or liquidated demand, and also enter interlocutory judgment for the value of the goods and the damages, or the damages only, as the case may be, and proceed as mentioned in Rule 4.

As to forms of interlocutory judgment, see "Seton on Decrees," 4th ed. vol. i. p. 8.

Recovery of land.

7. In an action for the recovery of land, if the defendant makes default, as mentioned in Rule 2, the plaintiff may enter a judgment that the person whose title is asserted in the writ of summons shall recover possession of the land, with his costs.

Recovery of land and mesne profits.

8. Where the plaintiff has endorsed a claim for mesne profits, arrears of rent, or damages for breach of contract upon a writ for the recovery of land, if the defendant makes default as mentioned in Rule 2, or if there be more than one defendant, some or one of the defendants make such default, the plaintiff may enter judgment against the defaulting defendant or defendants, and proceed as mentioned in Rules 4 and 5.

Probate actions.

9. In Probate actions, if any defendant make default in filing and delivering a defence or demurrer, the action may proceed, notwithstanding such default.

In other actions. Motion for judgment.

10. In all other actions than those in the preceding Rules of this Order mentioned, if the defendant makes default in delivering a defence or demurrer, the plaintiff may set down the action on motion for judgment, and such judgment shall be given as upon the statement of claim the Court shall consider the plaintiff to be entitled to.

As to setting down motions for judgment as short causes, see "Chancery Division, Notice," Order XL. Rule 1, *note*, *post*. Where the mortgagor, defendant in a foreclosure action, had not appeared, judgment for immediate foreclosure was given against him. (*Patey* v. *Flint*, W. N. 1879, 86.)

In actions in district registries, where the plaintiff is desirous of having the action set down under this Rule, he should apply to the Court for a direction that the papers should be sent up to London for the purpose of the hearing. Upon that being done he can apply at the Record and Writ Office to have the case set down without any further direction. (*Birmingham Waste Co.* v. *Lane*, 24 W. R. 292.)

Default by one of several defendants.

11. Where, in any such action as mentioned in the last preceding rule, there are several defendants, then, if one of such defendants make such default as aforesaid, the plaintiff may either set down the action at once on motion for judgment against the defendant so making default, or may set it down against him at the time when it is entered for trial or set down on motion for judgment against the other defendants.

Close of pleadings.

12. If the plaintiff does not deliver a reply or demurrer, or any party does not deliver any subsequent pleading or a demurrer within the period allowed for that purpose, the pleadings shall be deemed to be closed at the expiration of that period, and the statements of facts in the pleading last delivered shall be deemed to be admitted.

The pleadings will not be deemed to have been closed where one of several defendants has obtained extension of time. (*Ambroise* v. *Evelyn*, 11 Ch. D. 756.)

If the plaintiff does not, within the six weeks allowed him by Order XXXVI. Rule 4, give notice of trial, the proper course for the defendant is to move, under Rule 4*a* of the same order, to dismiss the action for want of prosecution. (*Litton* v. *Litton*, 3 Ch. D. 793.)

Default by third party.

13. In any case in which issues arise in an action other than between plaintiff and defendant, if any party to any such issue makes default in delivering any pleading, the opposite party may apply to the Court or a Judge for such judgment, if any, as upon the pleadings he may appear to be entitled to. And the Court may order judgment to be entered accordingly, or may make such other order as may be necessary to do complete justice between the parties.

Setting aside judgment by default.

14. Any judgment by default, whether under this order or under any other of these rules, may be set aside by the Court or a Judge, upon such terms as to costs or otherwise as such Court or Judge may think fit.

ORDER XXX.

Payment into Court in Satisfaction.

Time for.

1. Where any action is brought to recover a debt or damages, any defendant may at any time after service of the writ, and before or at the time of delivering his defence, or by leave of the Court or a Judge at any later time, pay into Court a sum of money by way of satisfaction or amends. Payment into Court shall be pleaded in the defence, and the claim or cause of action in respect of which such payment shall be made shall be specified therein.

Should be pleaded.

The language of this rule appears perfectly general, but as the Court might be guided by the previous state of the law, in considering what pleas were embarrassing, some of the statutes likely to be most useful, relating to payment into Court previous to the Judicature Act, are subjoined.

By 6 & 7 Vict. c. 96, s. 2.—In an action for a libel contained in any public newspaper or other periodical publication it shall be competent to the defendant to plead that such libel was inserted in such newspaper or other periodical publication without actual malice and without gross negligence; and that before the commencement of the action, or at the earliest opportunity afterwards, he inserted in such newspaper or other periodical publication a full apology for the said libel; or, if the newspaper or periodical publication in which the said libel appeared should be ordinarily published at intervals exceeding one week, had offered to publish the said apology in any newspaper or periodical publication to be selected by the plaintiff in such action; and that every such defendent shall upon filing such plea be at liberty to pay into Court a sum of money by way of amends for the injury sustained by the publication of such libel, and such payment into Court shall be of the same effect, and be available in the same manner and to the same extent, and be subject to the same rules and regulations as to payment of costs; and the form of pleading, except as far as regards the pleading of the additional facts hereinbefore required to be pleaded by such defendant, as if actions for libel had not been excepted from the personal actions in which it is lawful to pay money into Court under an Act passed in the session of Parliament held in the fourth year of his late Majesty, intituled "An Act for the further Amendment of the Law and the better advancement of Justice," and that to such plea to such action it shall be competent to the plaintiff to reply generally, denying the whole of such plea.

By 15 & 16 Vict. c. 76, s. 70.—It shall be lawful for the defendant in all actions (except actions for assault and battery, false imprisonment, libel, slander, malicious arrest, or prosecution, criminal conversation, or debauching of the plaintiff's daughter or servant), and by leave of the Court or a Judge, upon such terms as they or he may think fit, for one or more of several defendants to pay into Court a sum of money by way of compensation or amends: Provided, that nothing herein contained shall be taken to affect the provisions of a certain Act of Parliament passed in the session of Parliament holden in the sixth and seventh years of

the reign of her present Majesty, intituled "An Act to amend the Law respecting defamatory Words and Libel."

By 23 & 24 Vict. c. 126, s. 23.—The plaintiff in replevin may in answer to an avowry pay money into Court in satisfaction, in like manner and subject to the same proceedings as to costs and otherwise as upon a payment into Court by a defendant in other actions.

Payment into Court.

Before the Judicature Acts, a plea of payment into Court could not be joined with other defences denying the cause of action without leave. In *Berdan* v. *Greenwood*, approved of in *Hawkesley* v. *Bradshaw*, 5 Q. B. D. 302, however, the Court considered that it was not just in principle as regards a defendant, who considers that he has a good defence on the merits, and who is desirous, if possible, of terminating litigation by a payment of money, that he should be forbidden to adopt this prudent course. There are cases, however, in which payment into Court concurrently with other defences might be struck out under Order XXVII., Rule 1; such as an action to try a right in respect of property which is denied, or to establish character which has been assailed, or where the defence charges plaintiff with fraud. (3 Ex. D. 251; *Spurr* v. *Hall*, 2 Q. B. D. 615.)

Notice of.

2. Such sum of money shall be paid to the proper officer, who shall give a receipt for the same. If such payment be made before delivering his defence the defendant shall thereupon serve upon the plaintiff a notice that he has paid in such money, and in respect of what claim, in the Form No. 5 in Appendix (B) hereto.

Payment out.

3. Money paid into Court as aforesaid may, unless otherwise ordered by a Judge, be paid out to the plaintiff, or to his solicitor, on the written authority of the plaintiff. No affidavit shall be necessary to verify the plaintiff's signature to such written authority unless specially required by the officer of the Court.

Notice of acceptance.

4. The plaintiff, if payment into Court is made before delivering a defence, may within four days after receipt of notice of such payment, or if such payment is first stated in a defence delivered then may before reply, accept the same in satisfaction of the causes of action in respect of which it is paid in; in which case he shall give notice to the defendant in the Form No. 6 in Appendix (B) hereto, and shall be at liberty, in case the sum paid in is accepted in satisfaction of the entire cause of action, to tax his costs, and, in case of non-payment within forty-eight hours, to sign judgment for his costs so taxed.

If a plaintiff neglect to give the notice in the Form No. 6, Appendix (B), he may lose the right to his costs, vested in him under this rule. (*Langridge* v. *Campbell*, 2 Ex. D. 281.)

In *Broadhurst* v. *Willey*, W. N. 1876, 21, defendant sent a cheque for 33*l.*, which plaintiff refused to accept, demanding 43*l.*, for which he issued his writ. He afterwards took the 33*l.* paid into Court. Lindley, J., disallowed the costs, holding that he was empowered to do so under Order LV. for good cause shown.

ORDER XXXI.

Discovery and Inspection.

Interrogatories.

1. The plaintiff may, at the time of delivering his statement of claim, or at any subsequent time not later than the close of the pleadings, and a defendant may, at the time of delivering his defence, or at any subsequent time not later than the close of the pleadings, without any order for that purpose, and either party may at any time by leave of the Court or a Judge, deliver interrogatories in writing for the examination of the opposite party or parties, or any one or more of such parties, with a note at the foot thereof, stating which of such interrogatories each of such persons is required to answer: Provided that no party shall deliver more than one set of interrogatories to the same party without an order for that purpose.

Parties may be made defendants for the purpose of discovery. (*Orr* v. *Diaper*, 4 Ch., D. 92.) If in the opinion of the Court they be joined unnecessarily, they may be struck out, or, if retained till the hearing, they will be entitled to their costs. (*Bull* v. *W. London School Board*, 34 L. T. 674; *Wilson* v. *Church*, 9 Ch. D. 552.) As to interrogatories in an Admiralty action, see *The Biola*, 24 W. R. 524.

When interrogatories are delivered before the statement of defence, it must be shown that they are material at that stage of the action. (*Mercier* v. *Cotton*, 1 Q. B. D. 442.) In an action in the Chancery Division the materiality often sufficiently appears from the interrogatories themselves. (*Harbord* v. *Monk*, 9 Ch. D. 616.)

As a general rule a defendant will not be allowed to deliver interrogatories before statement of defence. (*Disney* v. *Longbourne*, 2 Ch. D. 704; *Hawley* v. *Reade*, W. N. 1876, 64.)

If the interrogatories be not delivered till some time after the close of the pleadings, the delay must be satisfactorily accounted for. (*London Prov. Co.* v. *Davis*, 5 Ch. D. 775; *Ellis* v. *Ambler*, 25 W. R. 557.)

The discovery must be from the opposite party; there is none directly from agents. (*Hall* v. *London and North-Western Ry. Co.*, 35 L. T. 848.)

Improper interrogatories.

2. The Court in adjusting the costs of the action shall at the instance of any party inquire or cause inquiry to be made into the propriety of exhibiting such interrogatories, and if it is the opinion of the

taxing master or of the Court or Judge that such interrogatories have been exhibited unreasonably, vexatiously, or at improper length, the costs occasioned by the said interrogatories and the answers thereto shall be borne by the party in fault.

3. Interrogatories may be in the Form No. 7 in Appendix (B) hereto, with such variations as circumstances may require. Form of.

4. If any party to an action be a body corporate or a joint stock company, whether incorporated or not, or any other body of persons, empowered by law to sue or be sued, whether in its own name or in the name of any officer or other person, any opposite party may apply at chambers for an order allowing him to deliver interrogatories to any member or officer of such corporation, company, or body, and an order may be made accordingly. Corporation.

This rule supersedes the old practice of the Court of Chancery of making an officer of a corporation a defendant for the purpose of discovery only. (*Wilson* v. *Church*, 9 Ch. 552.)

The town clerk to a corporation cannot object, that his information is derived as solicitor in the action, the corporation having elected to answer through him. (*Mayor of Swansea* v. *Quirk*, 5 C. P. D. 106.)

In order to interrogate a member of a company, it must be shown that he has the required information, and that there is no officer competent to make the required discovery. (*Berkeley* v. *Standard Co.*, 13 Ch. D. 97.)

When the plaintiff is a foreign government, the proceedings may be stayed till a proper person is named for the purpose of giving discovery. (*Republic of Costa Rica* v. *Erlanger*, 1 Ch. D. 174.)

Leave to interrogate a corporation is necessary. The information may extend to knowledge in the possession of agents. It would seem to be a good ground for objection that the inquiry would involve an unreasonable amount of expense. (*Hall* v. *London and North-Western Ry.*, 35 L. T. 848.)

5. Rules 5 and 8 of Order 31 are hereby repealed; the following Rule is substituted for the same:— R.S.C. Nov. 1878.

Any objection to answering any one or more of several interrogatories on the ground that it or they is or are scandalous or irrelevant, or not *bonâ fide* for the purpose of the action, or that the matters inquired into are not sufficiently material at that stage of the action, or on any other ground, may be taken in the affidavit in answer. Striking out interrogatories.

An application to set aside the interrogatories on the ground that they have been exhibited unreasonably or vexatiously, or to strike out any interrogatory

or interrogatories on the ground that it or they is or are scandalous, may be made at chambers within four days after service of the interrogatories.

A party may refuse to answer an interrogatory, on the ground that it would tend to criminate himself; but he is not thereby entitled to have it struck out. Questions merely to the credit of a witness are irrelevant, and he may decline to answer them on that ground. A party applying to have interrogatories struck out, must specify those to which he objects, unless they are so utterly irrelevant as to be an abuse of the process of the Court. (*Allhusen* v. *Labouchere*, 3 Q. B. D. 654; *Gay* v. *Labouchere*, 4 Q. B. D. 206.)

A plaintiff is entitled to a discovery of the facts upon which the defendant relies, but not of the evidence which it is proposed to adduce; hence he was allowed to interrogate as to what conversation took place, but not in whose presence it took place. (*Eade* v. *Jacobs*, 3 Ex. D. 335.)

As to particulars of misconduct, see *Saunders* v. *Jones*, 7 Ch. D. 435.

In an action by trustees for specific performance of a contract entered into with them, it is irrelevant to put interrogatories tending to show that the proposed investment was a breach of their trust. (*Mansfield* v. *Childerhouse*, 4 Ch. D. 82.)

In an action against a newspaper for libel, a defendant may be asked if he is the printer or publisher or both (*Ramsden* v. *Brearley*, W. N. 1875, 199); and as to what further interrogatories will be allowed, see *Carter* v. *Leeds News Co.*, W. N. 1876, 11; *Wilson* v. *Brignell*, W. N. 1875, 239. As to interrogatories disallowed as being too remote from the matter in issue, and opening too wide a field for inquiry, in fact obliging the plaintiffs to detail the whole manner of conducting their business, see *Steward* v. *Lord Lonsdale*, 5 C. P. D. 47.

In an action by a second against a first mortgagee, the defendant may be asked not only what is due upon his security but what security he holds. (*West of England Bank* v. *Nicholls*, 6 Ch. D., 613.)

Affidavit in answer.

6. Interrogatories shall be answered by affidavit to be filed within ten days, or within such other time as a Judge may allow.

A party cannot refuse to file his affidavit until he has been paid the taxed costs of making it. (*Berkeley* v. *Standard Discount Co.* 13 Ch. D. 97.)

Form of. R. S. C. June, 1876.

7. An affidavit in answer to interrogatories shall, unless otherwise ordered by a Judge, if exceeding ten folios, be printed, and may be in the Form No. 8 in Appendix (B) hereto, with such variations as circumstances may require.

In *Webb* v. *Bornford*, 46 L. J. Ch. 288, Hall, V. C., declined to allow a written schedule to a printed answer, but under the circumstances dispensed with the printing altogether.

8. Repealed by R. S. C. Nov. 1878.

See Rule 5, *ante*.

Insufficient answer.

9. No exceptions shall be taken to any affidavit in answer, but the sufficiency or otherwise of any such affidavit objected to as insufficient, shall be determined by the Court or a Judge on motion or summons.

Further answer.

10. If any person interrogated omits to answer, or answers insufficiently, the party interrogating may apply to the Court or a Judge for an order requiring him to answer, or to answer further, as the case may be. And an order may be made requiring him to answer or answer further either by affidavit or by *viva voce* examination, as the Judge may direct.

A summons under this Rule should state to what part or parts of the interrogatories a further answer is required. (*Anstey* v. *Woolwich Co.*, 11 Ch. D., 439.) This application is best made by summons. (*Chesterfield Co.* v. *Black*, 24 W. R., 783.)

An objection to answering an interrogatory must be specific. (*Church* v. *Perry*, 36 L. T., 513.)

Production of documents.

11. It shall be lawful for the Court or a Judge at any time during the pendency therein of any action or proceeding, to order the production by any party thereto, upon oath, of such of the documents in his possession or power, relating to any matter in question in such action or proceeding, as the Court or Judge shall think right; and the Court may deal with such documents, when produced, in such manner as shall appear just.

See note to Rule 13, *post*.

Discovery of documents.

12. Any party may, without filing any affidavit, apply to a Judge for an order directing any other party to the action to make discovery on oath of the documents which are or have been in his possession or power, relating to any matter in question in the action.

See note to Rule 13, *post*.

Affidavit in answer.

13. The affidavit to be made by a party against whom such order as is mentioned in the last preceding rule has been made, shall specify which, if any, of the documents therein mentioned, he objects to produce, and it may be in the Form No. 9 in Appendix (B) hereto, with such variations as circumstances may require.

Privilege.

One party is entitled to the production of documents in the possession of the other, relating to the matter in question, unless they be privileged; the Judge has no discretion. (*Bustros* v. *White*, 1 Q. B. D. 423.)

Documents prepared with a *bonâ fide* intention of being laid before a solicitor, in relation to an intended action, are privileged. (*Southwark Co.* v. *Quick*, 3 Q. B. D. 315; *M'Corquodale* v. *Bell*, 1 C. P. D. 471.) A report, for instance, procured by the solicitor, and furnished by a medical man, as to the injuries sustained by the plaintiff in a railway accident. (*Friend* v. *Chatham and Dover Ry.*, 2 Ex. D. 437.)

Reports of surveyors as to the condition of a cargo. (*Theodor Korner*, 3 P. D. 307.)

In an action for the recovery of land, the defendant is obliged to make an affidavit of his documents of title, but he may object to produce them. (*The New Investment Co.* v. *Peed*, 3 C. P. D. 196; *Egremont Burial Board* v. *Egremont Iron Co.*, 28 W. R. 594.) The lord of the manor may refuse inspection of the Court Rolls, to a person claiming adversely. (*Owen* v. *Wynn*, 9 Ch. D. 29.)

The shorthand writer's notes, and the indorsement on counsel's brief, in proceedings in Lunacy, are not privileged. (*Re Brown*, 28 W. R. 575.)

A plaintiff has obtained inspection of an agreement of compromise by defendant in a former action (*Hutchinson* v. *Glover*, 1 Q. B D. 138); but if it had been a document privileged in the former action it would have retained its privilege. (*Bullock* v. *Corry*, 3 Q. B. D. 356.)

A letter which cannot be said to be a confidential communication, between the defendant and any one in the nature of a legal adviser, is not privileged. (*English* v. *Tottie*, 1 Q. B. D. 141; *Anderson* v. *Bank of Columbia*, 2 Ch. D. 644.)

Stay of proceedings. In an action on a policy of insurance the defendants obtained an order that the action should be stayed until the plaintiffs satisfied the Court that they had done all in their power to obtain production of the ship's papers. (*West of England Bank* v. *Canton Co.* 2 Ex. D. 472.) But if the person in whose control the documents are is not within the jurisdiction of the Court, and it is difficult if not impossible to obtain the discovery, the Court will not stay the action under those circumstances. (*Frazer* v. *Burrows*, 2 Q. B. D. 624.)

Affidavit. An affidavit that a document is privileged is insufficient. It ought to state and verify the facts constituting the privilege. (*Gardner* v. *Irvin*, 4 Ex. D. 49.)

The documents may be described as "letters and correspondence which have passed between my legal advisers and myself, numbered from to inclusive, and tied up in a bundle marked with the letter A, and initialed by me." (*Taylor* v. *Batten*, 4 Q. B. D. 85.)

A person who objects to the production of documents, on the ground that they may tend to criminate himself, must make the objection on oath. (*Webb* v. *East*, 5 Ex. D. 23.)

Third parties. As to obliging third parties to produce documents at the hearing in the Court of Appeal, see *Benyon* v. *Godden*, W. N. 1877, 257.

Public policy. The affidavit in support of the objection to discovery, on the ground that the production would be contrary to public policy, must state sufficient to enable the Court to see whether that objection can be sustained. (*Kain* v. *Farrer*, W. N. 1877, 266.)

Crown. The Crown is entitled to obtain discovery from the suppliant in a petition of right. (*Tomline* v. *The Queen*, 4 Ex. D. 252.)

Lunatic. A defendant is entitled to an affidavit of documents from the next friend of a plaintiff of unsound mind. (*Higginson* v. *Hall*, 10 Ch. D. 235.) Where an order for production would have prejudiced the

lien of a clerk to a local board, the Court would not make the order before the trial, unless a sufficient sum were paid into Court, upon which he was to have the same lien as upon the papers. (*Newington Board* v. *Eldridge*, 12 Ch. D. 349.) Lien.

It is doubtful whether a plaintiff cannot obtain an order for production of documents before he has delivered his statement of claim. (*The Republic of Costa Rica* v. *Strousberg*, 11 Ch. D. 323.) He can in some instances before delivery of the statement of defence, though it ought not to be a matter of course. (*Union Bank of London* v. *Manby*, 13 Ch. D. 241.) Time for.

In an action for the recovery of land the plaintiff must show that his claim rests on some reasonable foundation. (*Phillips* v. *Phillips*, 27 W. R. 939.) Recovery of land.

The words "and never have had" are material. (*Wagstaffe* v. *Anderson*, 39 L. T. 332.) Where the documents by the consent of parties are submitted to the Judge, his decision is final. (*Bustros* v. *White*, 1 Q. B. D. 422.) Generally.

On an application for discovery the nature of the case must be such as to suggest to the Judge that documents are or have been in the possession or power of the party against whom the order is sought. (*Johnson* v. *Smith*, 25 W. R. 539.)

When an action has been referred to an official referee the production of documents remains in the control of the Court. (*Rowcliffe* v. *Leigh*, 4 Ch. D. 661.) Subject to this control in practice the referee usually makes the order, and in cases of non-compliance, would report the matter to the Court.

An affidavit of documents is conclusive, unless it can be shown, either from the affidavit itself, or from the documents referred to, or from an admission in the pleadings, that other documents exist. (*Jones* v. *Monte Video Gas Co.*, W. N. 1880, 87; *Welsh Coal Co.* v. *Gaskell*, 36 L. T. 352.)

An order for discovery may be made in proceedings under the Companies Act, 1862, though no action is proceeding. (*Re National Funds Co.*, 24 W. R. 774.) In an Admiralty action an order for discovery may be made against the owners of a foreign ship. (*The Emma*, 24 W. R. 587.)

14. Every party to an action or other proceeding shall be entitled, at any time before or at the hearing thereof, by notice in writing, to give notice to any other party, in whose pleadings or affidavits reference is made to any document, to produce such document for the inspection of the party giving such notice, or of his solicitor, and to permit him or them to take copies thereof; and any party not complying with such notice shall not afterwards be at liberty to put any such document in evidence on his behalf in such action or proceeding, unless he shall satisfy the Court that such document relates only to his own title, he being a defendant to the action, or that he had some other sufficient cause for not complying with such notice. Inspection of documents.

15. Notice to any party to produce any documents referred to in his pleading or affidavits shall be in the Form No. 10 in Appendix (B) hereto. Notice to produce.

As to costs, see R. S. C. (costs), Rule 15, *post*.

Time for inspection.

16. The party to whom such notice is given shall, within two days from the receipt of such notice, if all the documents therein referred to have been set forth by him in such affidavit as is mentioned in Rule 13, or if any of the documents referred to in such notice have not been set forth by him in any such affidavit, then within four days from the receipt of such notice, deliver to the party giving the same a notice stating a time within three days from the delivery thereof at which the documents, or such of them as he does not object to produce, may be inspected at the office of his solicitor, and stating which (if any) of the documents he objects to produce, and on what ground. Such notice may be in the Form No. 11 in Appendix (B) hereto, with such variations as circumstances may require.

Order for inspection.

17. If the party served with notice under Rule 15 omits to give such notice of a time for inspection, or objects to give inspection, the party desiring it may apply to a Judge for an order for inspection.

Application for documents not referred to in the pleading.

18. Every application for an order for inspection of documents shall be to a Judge. And except in the case of documents referred to in the pleadings or affidavits of the party against whom the application is made, or disclosed in his affidavit of documents, such application shall be founded upon an affidavit showing of what documents inspection is sought, that the party applying is entitled to inspect them, and that they are in the possession or power of the other party.

As to costs, see R. S. C. (costs) Rule 16, *post*.

Question may be reserved.

19. If the party from whom discovery of any kind or inspection is sought objects to the same, or any part thereof, the Court or a Judge may, if satisfied that the right to the discovery or inspection sought depends on the determination of any issue or question in dispute in the action, or that for any other reason it is desirable that any issue or question in dispute in the action should be determined before deciding upon the right to the discovery or inspection, order that such issue or question be determined first, and reserve the question as to the discovery or inspection.

In *Re Leigh*, 6 Ch. D. 256, where an executrix disputed a horse-dealer's account, and the dispute was whether or not certain horses

were sold on commission, the Court refused to order the horse-dealer to disclose the prices, as being immaterial, until it had been decided that the horses were sold on commission.

Failure to comply with order.

20. If any party fails to comply with any order to answer interrogatories, or for discovery or inspection of documents, he shall be liable to attachment. He shall also, if a plaintiff, be liable to have his action dismissed for want of prosecution, and, if a defendant, to have his defence, if any, struck out, and to be placed in the same position as if he had not defended, and the party interrogating may apply to the Court or a Judge for an order to that effect, and an order may be made accordingly.

Where a Master has made an order under this rule, that an action be dismissed unless certain interrogatories be answered by a certain day, the action does not come to an end so as to prevent an extension of time after that day, under Order LVII., Rule 6. (*Burke* v. *Rooney*, 48 L. J. 601.)

It will only be in extreme cases that the Court will consent to strike out the defence. (W. N., 1875, 202.)

This rule does not apply to orders made under Order XVI., Rule 10, and Order XV., Rule 1.

Service of order.

21. Service of an order for discovery or inspection made against any party on his solicitor shall be sufficient service to found an application for an attachment for disobedience to the order. But the party against whom the application for an attachment is made may show in answer to the application that he has had no notice or knowledge of the Order.

Solicitor to give notice to client.

22. A solicitor upon whom an Order against any party for discovery or inspection is served under the last Rule, who neglects without reasonable excuse to give notice thereof to his client, shall be liable to attachment.

Answers, how put in evidence.

23. Any party may, at the trial of an action or issue, use in evidence any one or more of the answers of the opposite party to interrogatories without putting in the others: Provided always, that in such case the Judge may look at the whole of the answers, and if he shall be of opinion that any other of them are so connected with those put in that the last-mentioned answers ought not to be used without them, he may direct them to be put in.

ORDER XXXII.

Admissions.

Admissions by pleadings.

1. Any party to an action may give notice, by his own statement or otherwise, that he admits the truth of the whole or any part of the case stated or referred to in the statement of claim, defence, or reply of any other party.

By Order XIX., Rule 17, facts not denied are taken to be admitted. This rule gives a slight extension, for it would enable parties to give notice after the close of the pleadings.

Notice to admit document.

2. Either party may call upon the other party to admit any document, saving all just exceptions; and in case of refusal or neglect to admit, after such notice, the costs of proving any such document shall be paid by the party so neglecting or refusing, whatever the result of the action may be, unless at the hearing or trial the Court certify that the refusal to admit was reasonable; and no costs of proving any document shall be allowed unless such notice be given, except where the omission to give the notice is, in the opinion of the taxing officer, a saving of expense.

Form of.

3. A notice to admit documents may be in the Form No. 12 in Appendix (B) hereto.

Evidence of admissions.

4. An affidavit of the solicitor or his clerk, of the due signature of any admissions made in pursuance of any notice to admit documents, and annexed to the affidavit, shall be sufficient evidence of such admissions.

ORDER XXXIII.

Inquiries and Accounts.

When may be directed.

The Court or a Judge may, at any stage of the proceedings in a cause or matter, direct any necessary inquiries or accounts to be made or taken, notwithstanding that it may appear that there is some special or further relief sought for or some special issue to be tried, as to which it may be proper that the cause or matter should proceed in the ordinary manner.

In *Barber* v. *Mackrell*, 12 Ch. D. 534, additional accounts were ordered to those directed to be taken by the decree, on the ground of fraud or misappropriation, notwithstanding the lapse of time.

Accounts may be taken in a district registry by order of the Judge. (Sec. 66 of the Jud. Act, 1873, *ante.*)

Further, for proceedings in district registries, see Order XXXV., *post*.

ORDER XXXIV.

Questions of Law.

Special case by consent.

1. The parties may, after the writ of summons has been issued, concur in stating the questions of law arising in the action in the form of a special case for the opinion of the Court. Every such special case shall be divided into paragraphs numbered consecutively, and shall concisely state such facts and documents as may be necessary to enable the Court to decide the questions raised thereby. Upon the argument of such case the Court and the parties shall be at liberty to refer to the whole contents of such documents, and the Court shall be at liberty to draw from the facts and documents stated in any such special case any inference, whether of fact or law, which might have been drawn therefrom if proved at a trial.

Only such questions of law can be properly raised as must necessarily arise in the action. (*The Republic of Bolivia* v. *The National Bolivian Navigation Co.*, 24 W. R. 361.)

Special case by order of Court.

2. If it appear to the Court or a Judge, either from the statement of claim or defence or reply or otherwise, that there is in any action a question of law, which it would be convenient to have decided before any evidence is given or any question or issue of fact is tried, or before any reference is made to a referee or an arbitrator, the Court or Judge may make an order accordingly, and may direct such question of law to be raised for the opinion of the Court, either by special case or in such other manner as the Court or Judge may deem expedient, and all such further proceedings as the decision of such question of law may render unnecessary may thereupon be stayed.

Under this rule after writ and appearance, and before statement of claim, the plaintiff filed an affidavit uncontradicted by the defendant, that there were no facts in dispute, and that the question was one of law. He obtained an order, and the Court of Appeal would not interfere with the discretion of the Judge below, and will not interfere except in an extreme case. (*The Metropolitan Board of Works* v. *The New River Co.*, 2 Q. B. D. 67.)

By analogy to this rule the Court will, at the trial of an action which involves questions both of law and fact, first decide the question of law, if such decision may render it unnecessary to try the questions of fact. (*Pooley* v. *Driver*, 5 Ch. D. 458.

Special case to be printed.

3. Every special case shall be printed by the plaintiff, and signed by the several parties or their solicitors, and shall be filed by the plaintiff. Printed copies for the use of the Judges shall be delivered by the plaintiff.

As to printing, &c., of special cases, see R. S. C. (Costs), Orders IV., V., *post*.

Signature of counsel is not now necessary. (*Hare* v. *Hare*, W. N. 1876, 44.)

In the Common Law Divisions special cases are usually argued before the Divisional Court by the consent of parties. (See Order LVII*a*, Rule 1, *post*.)

Special case, persons under disability.

4. No special case in an action to which a married woman, infant, or person of unsound mind is a party shall be set down for argument without leave of the Court or a Judge, the application for which must be supported by sufficient evidence that the statements contained in such special case, so far as the same affect the interest of such married woman, infant, or person of unsound mind, are true.

Entry for argument.

5. Either party may enter a special case for argument by delivering to the proper officer a memorandum of entry, in the Form No. 13 in Appendix (B) hereto, and also if any married woman, infant or person of unsound mind be a party to the action, producing a copy of the order giving leave to enter the same for argument.

Agreement as to payment of money and costs. R.S.C., April 1880.

6. The parties to a special case may, if they think fit, enter into an agreement in writing, which shall not be subject to any stamp duty, that on the judgment of the Court being given in the affirmative or negative of the question or questions of law raised by the special case, a sum of money, fixed by the parties, or to be ascertained by the Court, or in such manner as the Court may direct, shall be paid by one of the parties to the other of them, either with or without costs of the action, and the judgment of the Court may be entered for the sum so agreed or ascertained, with or without costs, as the case may be, and execution may issue upon such judgment forthwith, unless otherwise agreed, or unless stayed on appeal.

Application of order, &c. R.S.C., April 1880.

7. This Order shall apply to every special case stated in an action, or in any proceeding incidental to an action. No special case shall hereafter be stated under the Act 13 & 14 Vict. c. 35.

ORDER XXXV.

Proceedings in District Registries.

1. Order XXXV., Rule 1, of "The Rules of the Supreme Court" is hereby annulled, and the following shall stand in lieu thereof:— R. S. C. June 1876.

1*a*. Where an action proceeds in the district registry, all proceedings, except where by any of the rules of the Supreme Court it is otherwise provided, or the Court or a Judge shall otherwise order, shall be taken in the district registry, down to and including final judgment, and every final judgment and every order for an account by reason of the default of the defendant, or by consent, shall be entered in the district registry in the proper book, in the same manner as a like judgment or order in an action proceeding in London would be entered in London.

Where the writ of summons is issued out of a district registry, and the plaintiff is entitled to enter interlocutory judgment under Order XIII., Rule 6, or where the action proceeds in the district registry, and the plaintiff is entitled to enter interlocutory judgment under Order XXIX., Rule 4 or 5, in either case such interlocutory judgment, and when damages shall have been assessed, final judgment, shall be entered in the district registry, unless the Court or Judge shall otherwise order.

Where an action proceeds in the district registry, final judgment shall be entered in such registry, unless the Judge at the trial or the Court or a Judge shall otherwise order.

Actions in the Queen's Bench, Common Pleas, and Exchequer Divisions shall be entered for trial with the associates *and not in the district registries.* Repealed R.S.C. Dec. 1879.

A motion made in the Chancery Division has the effect of removing the proceedings out of the district registry. (*Dyson* v. *Pickles*, 27 W. R. 376.) A district registrar has no power to make a decree on an administration summons, even by consent. (*Irlam* v. *Irlam*, 2 Ch. D. 608; *Brassington* v. *Cussons*, 24 W. R. 881.) He has no power to take accounts, unless the judgment specially directs them; nor can he appoint a receiver, nor direct a banking account to be opened to which money is to be paid in. The action should be set down for hearing before the Judge of the Chancery Division to whom it has been assigned. (*Hutchinson* v. *Ward*, 6 Ch. D. 692.) In an action in a district registry, where the receiver has been ordered to pay money into Court to the credit of the action, it is no compliance with the order to pay money into a bank to the credit of the district registrar. (*Finlay* v. *Davis*, 12 Ch. D. 735.)

Where Hall, V.C., had directed that a sale should take place in his chambers, the Court of Appeal held that it was a matter entirely within the discretion of the Judge, and refused to interfere with his exercise of it, although they thought that the sale might have more conveniently taken place in the district registry. (*Macdonald* v. *Foster*, 6 Ch. D. 193.)

The Judge will only make an order that the costs should be taxed in a district registry under very special circumstances. (*Day* v. *Whittaker*, 6 Ch. D. 734; and see Rule 3, *post.*)

An Order in Council regulating district registrars, dated the 12th August, 1875 (published in W. N. 1875, Pt. II. 396), is subjoined:—

"That there shall be district registrars in the places of Liverpool, Manchester, and Preston, and the district registrar at Liverpool of the High Court of Admiralty, and the district prothonotary at Liverpool of the Court of Common Pleas at Lancaster, shall be and are hereby appointed the district registrars in Liverpool; and the district prothonotary at Manchester of the said Court of Common Pleas shall be and is hereby appointed the district registrar in Manchester; and the district prothonotary at Preston of the said Court of Common Pleas shall be and is hereby appointed the district registrar at Preston; and that the District for each such place shall be the district now assigned to each such District Prothonotary under the provisions and authority of 'The Common Pleas at Lancaster Amendment Act, 1869.'

"That there shall be a district registrar in Durham, and that the District Prothonotary of the Court of Pleas at Durham shall be and is hereby appointed the district registrar in Durham; and that the district shall be the district, for the time being, of the County Court holden at Durham.

"That, in the places mentioned in the Schedule annexed, there shall be district registrars, and that the registrar of the County Court held in any such place shall be and is hereby appointed the district registrar in such place, and that the district for each such place shall be the district for the time being of the County Court holden at such place.

Bangor.
Barnsley.
Barnstaple.
Bedford.
Birkenhead.
Birmingham.
Boston.
Bradford.
Bridgewater.
Brighton.
Bristol.
Bury St. Edmunds.
Cambridge.
Cardiff.
Carlisle.
Carmarthen.
Cheltenham.
Chester.
Colchester.
Derby.
Dewsbury.
Dover.
Dorchester.
Dudley.
East Stonehouse.
Exeter.
Gloucester.
Great Grimsby.
Great Yarmouth.
Halifax.
Hanley.
Hartlepool.
Hereford.
Huddersfield.
Ipswich.
Kingston-on-Hull.
King's Lynn.
Leeds.
Leicester.
Lincoln.
Lowestoft.
Maidstone.

Newcastle-upon-Tyne.	Sheffield.
Newport, Monmouth.	Shrewsbury.
Newport, Isle of Wight.	Southampton.
Newtown.	Stockton-on-Tees.
Northampton.	Sunderland.
Norwich.	Swansea.
Nottingham.	Truro.
Oxford.	Totnes.
Pembroke Docks.	Wakefield.
Peterborough.	Walsall.
Poole.	Whitehaven.
Portsmouth.	Wolverhampton.
Ramsgate.	Worcester.
Rochester.	York.

1*b*. So much of Order 35, Rule 1*a*, as directs that actions in the Queen's Bench, Common Pleas, and Exchequer Divisions shall not be entered for trial in the district registries is hereby repealed. R.S.C. Dec. 1879.

2. Subject to the foregoing rules, where an action proceeds in the district registry the judgment and all such orders therein as require to be entered, except orders made by the district registrar under the authority and jurisdiction vested in him under these rules, shall be entered in London, and an office copy of every judgment and order so entered shall be transmitted to the district registry to be filed with the proceedings in the action. Judgment entered in London.

3. Where an action proceeds in the district registry all writs of execution for enforcing any judgment or order therein shall issue from the district registry, unless the Court or a Judge shall otherwise direct. Where final judgment is entered in the district registry costs shall be taxed in such registry unless the Court or a Judge shall otherwise order. Execution from district registry.

See *Day* v. *Whittaker*, Rule 1*a*, *ante*.

3*a*. Where an action proceeds in a district registry, all proceedings relating to the following matters, namely,— Proceedings necessary or incidental to judgment. R.S.C. April 1880.

(*a*) Leave to issue or renew writs of execution;
(*b*) Examination of judgment debtors for garnishee purposes;
(*c*) Garnishee orders;
(*d*) Charging orders nisi;

shall, unless the Court or a Judge otherwise order, be taken in the district registry.

District registrar, jurisdiction.

4. Where an action proceeds in a district registry the district registrar may exercise all such authority and jurisdiction in respect of the action as may be exercised by a Judge at Chambers, except such as by these Rules a Master of the Queen's Bench, Common Pleas, or Exchequer Divisions is precluded from exercising.

As to Masters, see Order LIV., Rule 2, *post*.

Applications to registrar.

5. Every application to a district registrar shall be made in the same manner in which applications at Chambers are directed to be made by these rules.

Reference to Judge by.

6. If any matter appears to the district registrar proper for the decision of a Judge, the registrar may refer the same to a Judge, and the Judge may either dispose of the matter or refer the same back to the registrar with such directions as he may think fit.

A district registrar cannot refer to the Judge under this Rule unless a summons has been taken out calling upon the other side to appear before the registrar. (W. N. 1875, 250.)

Appeal from.

7. Any person affected by any Order or decision of a district registrar may appeal to a Judge. Such appeal may be made notwithstanding that the Order or decision was in respect of a proceeding or matter as to which the district registrar had jurisdiction only by consent. Such appeal shall be by summons within four days after the decision complained of, or such further time as may be allowed by a Judge or the registrar.

Appeal no stay, except by order.

8. An appeal from a district registrar shall be no stay of proceedings unless so ordered by a Judge or the registrar.

Registrar under control of Court.

9. Every district registrar and other officer of a district registry shall be subject to the orders and directions of the Court or a Judge as fully as any other officer of the Court, and every proceeding in a district registry shall be subject to the control of the Court or a Judge, as fully as a like proceeding in London.

In the Chancery Division.

10. Every reference to a Judge by or appeal to a Judge from a district registrar in any action in the Chancery Division shall be to the Judge to whom the action is assigned.

Removal of action.

11. In any action which would, under the foregoing rules, proceed in the district registry, any defendant may remove the action from the district registry as of right in the cases, and within the times, following:

Where the writ is specially indorsed under Order III., Rule 6, and the plaintiff does not within four days after the appearance of such defendant give notice of an application for an order against him under Order XIV.; then such defendant may remove the action as of right at any time after the expiration of such four days, and before delivering a defence, and before the expiration of the time for doing so:

Where the writ is specially indorsed and the plaintiff has made such application as in the last paragraph mentioned, and the defendant has obtained leave to defendant in manner provided by Order XIV.; then such defendant may remove the action as of right at any time after the order giving him leave to defend, and before delivering a defence and before the expiration of the time for doing so:

Where the writ is not specially indorsed any defendant may remove the action as of right at any time after appearance, and before delivering a defence, and before the expiration of the time for doing so.

R.S.C. Dec. 1875.

11*a*. In an Admiralty action *in rem*, any person who may have duly intervened and appeared may remove an action from a district registry as of right.

Removal by notice.

12. Any defendant desirous to remove an action as of right under the last preceding rule may do so by serving upon the other parties to the action, and delivering to the district registrar, a notice, signed by himself or his solicitor, to the effect that he desires the action to be removed to London, and the action shall be removed accordingly: Provided, that if the Court or a Judge shall be satisfied that the defendant giving such notice is a merely formal defendant, or has no substantial cause to interfere in the conduct of the action, such Court or Judge may order that the action may proceed in the district registry notwithstanding such notice.

Removal by order.

13. In any case not provided for by the last two preceding Rules, any party to an action proceeding in a district registry may apply to the Court or a Judge, or to the district registrar, for an order to remove the action from the district registry to London, and such Court, Judge, or registrar, may make an order accordingly, if satisfied that there is sufficient reason for doing so, upon such terms, if any, as shall seem just.

Any party to an action proceeding in London may apply to the Court or a Judge for an order to remove the action from London to any district registry, and such Court or Judge may make an order accordingly, if satisfied that there is sufficient reason for doing so, upon such terms, if any, as shall seem just.

As to removal, see *The Birmingham Waste Company* v. *Lane*, Order XXIX., Rule 10, *ante*; and see sec. 65 of the Act of 1873, *ante*.

Transmission of documents.

14. Whenever any proceedings are removed from the district registry to London, the district registrar shall transmit to the proper officer of the High Court of Justice all original documents (if any) filed in the district registry, and a copy of all entries in the books of the district registry of the proceedings in the action.

Account. R.S.C. Dec. 1875.

15. Every district registrar shall account for and pay over to the Treasury all moneys paid into Court at the registry of which he is registrar, in such manner and at such times as may be from time to time directed by the Treasury.

Application of rules of April 1880. R.S.C. May, 1880.

16. (*a.*) So much of Order XXXVII., Rule 3*d*, as requires affidavits to be filed in a central office shall not apply to affidavits required to be filed in a district registry.

(*b.*) Order LIV., Rules 7 to 14, both inclusive, shall not apply to proceedings in district registries.

(*c.*) The forms contained in the schedule to the Rules of the Supreme Court, April, 1880, may, as far as they are applicable, be used in or for the purposes of district registries, with such variations as circumstances require.

ORDER XXXVI.

TRIAL.

Place of trial.

1. There shall be no local venue for the trial of any action, but when the plaintiff proposes to have the action tried elsewhere than in Middlesex, he shall in his statement of claim name the county or place in which he proposes that the action shall be tried, and the action shall, unless a Judge otherwise orders, be tried in the county or place so named. Where no place of trial is named in the statement of claim, the place of trial shall, unless a Judge otherwise orders, be the county of Middlesex. Any order of a Judge, as to such place of trial, may be discharged or varied by a Divisional Court of the High Court.

The Court will not change the place of trial without good cause shown. (*Ridge* v. *Ridge*, 35 L. T. 428.) This was a case in the Probate Division.

If in an action in the Chancery Division a plaintiff name a division of Assize, as the place in which he desires the action to be tried, in the absence of any order to the contrary, it will be tried before the Judge of Assize. (*Redmayne* v. *Vaughan*, 24 W. R. 983.)

Various modes of trial.

2. Actions shall be tried and heard either before a Judge or Judges, or before a Judge sitting with assessors, or before a Judge and Jury, or before an official or special referee, with or without assessors.

An official referee has no power to order judgment to be entered, and his report is not final. (*Longman* v. *East*, 3 C. P. D. 142.) In Chancery cases, when the trial has taken place at the Assizes, an application for a charging order must be made to the Judge who tried the case. (*Owen* v. *Henshaw*, 26 W. R. 188.)

Notice of trial, selection of mode.

3. Subject to the provisions of the following Rules, the plaintiff may, with his reply, or at any time after the close of the pleadings, give notice of trial of the action, and thereby specify one of the modes mentioned in Rule 2; and the defendant may, upon giving notice within four days from the time of the service of the notice of trial, or within such extended time as a Court or Judge may allow, to the effect that he desires to have the issues of fact tried before a Judge and Jury, be entitled to have the same so tried.

Where the plaintiff has given notice of trial before a Judge and assessors, the defendant may insist on a trial before a jury by giving notice within the time specified. (*Sugg* v. *Silber*, 1 Q. B. D. 362.)

It is a question of some nicety to what extent this Rule is qualified by Rule 26, *post:* it appears to be somewhat restricted

by it. The defendant is not entitled as a matter of right to have the issues of fact tried before a Judge and jury, even should he apply within the four days allowed for that purpose, in causes which, previously to the passing of the Act, could without any consent of parties be tried without a jury. Either party may, however, at any time have an order to try any issue of fact before a jury, if he can make it appear to a Court or Judge that it will be more convenient. In the exercise of their discretion under these rules, the Court is mostly governed by considerations as to whether the questions of law and fact are intricate, or are involved the one with the other. "The Rule (*i.e.* 26) was intended to apply to that class of actions which a jury is not as a rule competent to deal with, either from their great complexity as regards facts, or from fact and law being so intermingled together, that it would be difficult, if not impossible, to direct a jury by separating the law from the fact; or because the questions as regards the law are of such a delicate nature, and require a knowledge of such refined law, that they could not be conveniently presented to a jury." (Per Jessel, M.R., in *Bordier* v. *Burrell*, 5 Ch. D. 514.)

"It is essentially a matter of discretion, and the Court of Appeal will not interfere," per James, L.J., in *Swindell* v. *The Birmingham Syndicate*, 3 Ch. D. 133, "unless the Judge were to say that he exercised it in a particular way, because he held a certain opinion on a matter of law, in which the Court of Appeal considered that he was wrong" (by the same learned Judge in *Ruston* v. *Tobin*, 10 Ch. D. 565). As to instances of how this discretion has been exercised, see also *Spratt's Patent* v. *Ward*, 11 Ch. D. 240; *The Singer Manufacturing Company* v. *Loog*, 11 Ch. D. 656, and the cases cited in *Ruston* v. *Tobin*, *ubi suprà*, and *Wedderburn* v. *Pickering*, 13 Ch. D. 769.

In *Thomas* v. *Williams*, W. N. 1880, 91, the defendants contended unsuccessfully that they had a right to have the question tried by a Jury under Fox's Act, as the circular complained of was libellous.

The fact, that a man's character will be seriously affected by the trial, will be a paramount reason for having the action tried in open Court, and will be strong grounds for insisting on a jury. (*Leigh* v. *Brooks*, 5 Ch. D. 592.)

Notice issues. If the case be considered suitable for trial by a Judge and jury, the notice last mentioned should not be given in Court, and the issues, if the parties cannot agree, should be settled in Chambers. (*Powell* v. *Williams*, 27 W. R. 796.)

Second trial. In actions remitted to the County Court for trial, it is no answer to the demand of the plaintiff for a jury on a second trial, that the first trial had taken place without one. (*Ford* v. *Taylor*, W. N. 1877, 239.)

A plaintiff, having set down his action before a Judge of the Chancery Division, has thereby exercised his option as to the mode of trial, and is not entitled of right to apply under Rule 6 for the trial of an issue before a jury. (*Dent* v. *The Sovereign Life Assurance Company*, 27 W. R. 379.)

Notice by defendant.

4. Subject to the provisions of the following rules, if the plaintiff does not within six weeks after the close of the pleadings, or within such extended time as a Court or Judge may allow, give notice of trial, the defendant may, before notice of trial given by

the plaintiff, give notice of trial, and thereby specify one of the modes mentioned in Rule 2; and in such case the plaintiff, on giving notice within the time fixed by Rule 3 that he desires to have the issues of fact tried before a Judge and jury, be entitled to have the same so tried.

R.S.C. June, 1876. Application to dismiss by defendant.

4*a*. The defendant, instead of giving notice of trial, may apply to the Court or Judge to dismiss the action for want of prosecution; and on the hearing of such application, the Court or a Judge may order the action to be dismissed accordingly, or may make such other order, and on such terms, as to the Court or Judge may seem just.

In cases where there are more defendants than one, before moving under this rule, it appears that the proper practice is to write to the plaintiff's solicitor, and ask him what is the state of the pleadings, as the close of the proceedings may have been postponed, by an extension of time granted to one of the other defendants. (*Ambroise* v. *Evelyn*, 11 Ch. D. 759.)

This application in the Common Law Divisions is usually made in Chambers and in the Chancery Division, unless it be practically unopposed. If the plaintiff desire to avoid the cost of the hearing, he should tender the costs of the notice to the defendant, and give the usual undertaking to go on. (*Evelyn* v. *Evelyn*, 13 Ch. D. 138; *Freason* v. *Loe*, 26 W. R. 138.)

Change of specified mode.

5. In any case in which neither the plaintiff nor defendant has given notice under the preceding Rules that he desires to have the issues of fact tried before a Judge and jury, or in any case within the 57th section of the Act, if the plaintiff or defendant desires to have the action tried in any other mode than that specified in the notice of trial, he shall apply to the Court or a Judge for an order to that effect, within four days from the time of the service of the notice of trial, or within such extended time as a Court or Judge may allow.

In *Lascelles* v. *Butt*, 2 Ch. D. 588, the plaintiff having given notice of trial before a Judge, and becoming desirous of having the action tried before an official referee, it was held that his application was not warranted, as it was made after the four days had elapsed.

If either party desire a jury, he will proceed under Rule 3, so that it seems this rule only applies to the selection of one of the other modes of trial.

Trial by different modes.

6. Subject to the provisions of the preceding rules, the Court or a Judge may, in any action at any time or from time to time, order that different questions of fact arising therein be tried by different modes of

trial, or that one or more questions of fact be tried before the others, and may appoint the place or places for such trial or trials, and in all cases may order that one or more issues of fact be tried before any other or others.

In granting an application under this rule, the Court will sometimes impose terms. (*The Emma Silver Mining Company* v. *Grant*, 11 Ch. D. 918.)

In *The Tasmanian Railway Company* v. *Clark* (W. N. 1879, 106), the Court of Common Pleas refused leave to try the liability of a surety, before that of the principal, and the Court of Appeal declined to interfere with their discretion.

Where a reference would be ordered by the Judge as to a question of accounts, it seems proper that the question of liability should be tried separately from the question of damages. (*Liverpool & Brazil Navigation Company* v. *London & St. Catherine, &c., Company*, W. N. 1875, 203.)

When a plaintiff has set down his action before a Judge of the Chancery Division, he has thereby exercised his option as to the mode of trial, and is not entitled of right to apply under this rule for the trial of an issue before a jury. (*Dent* v. *The Sovereign Life Assurance Company*, 27 W. R., 379.)

Usually before single Judge.

7. Every trial of any question or issue of fact by a jury shall be held before a single Judge, unless such trial be specially ordered to be held before two or more Judges.

Notice, what to contain.

8. Notice of trial shall state whether it is for the trial of the action or of issues therein; and in actions in the Queen's Bench, Common Pleas, and Exchequer Divisions, the place and day for which it is to be entered for trial. It may be in the Form No. 14 in Appendix (B), with such variations as circumstances may require.

R.S.C. Dec. 1875.

Long and short notice.

9. Ten days' notice of trial shall be given, unless the party to whom it is given has consented to take short notice of trial; and shall be sufficient in all cases, unless otherwise ordered by the Court or a Judge. Short notice of trial shall be four days' notice.

Notice before entry.

10. Notice of trial shall be given before entering the action for trial.

R.S.C. Dec. 1875. Lapse of.

10*a*. Unless within six days after notice of trial is given, the cause shall be entered for trial by one party or the other, the notice of trial shall be no longer in force. This rule is not to apply in any case in which notice of trial has been already given or to trials not in London or Middlesex.

In London or Middlesex.

11. Notice of trial for London or Middlesex shall not be or operate as for any particular sittings; but shall be deemed to be for any day after the expiration of the notice on which the action may come on for trial in its order upon the list.

For the assizes.

12. Notice of trial elsewhere than in London or Middlesex shall be deemed to be for the first day of the then next assizes at the place for which notice of trial is given.

Countermand of notice.

13. No notice of trial shall be countermanded, except by consent, or by leave of the Court or a Judge, which leave may be given subject to such terms as to costs, or otherwise, as may be just.

Omission to enter for trial.

14. If the party giving notice of trial for London or Middlesex omits to enter the action for trial on the day or day after giving notice of trial, the party to whom notice has been given may, unless the notice has been countermanded under the last rule, within four days enter the action for trial.

R.S.C. Dec. 1879.

15*a*. Order XXXVI., Rule 15, is hereby repealed, and the following rule substituted:—

Entry in district registry.

After notice of trial has been given of any action or issue to be tried elsewhere than in London or Middlesex, either party may at any time before the day next before the commission day enter the action or issue for trial at the next assizes in the district registry (if any) of the city or town where the trial is to be had, or with the associate at the assize town as heretofore.

So long as there is no district registry in the places enumerated in the first of the following columns, entries for trial may be made in the district registries in the second of the following columns, *i.e.*, actions and issues for trial at—

Bodmin	may be entered in the district registry at	Truro.
Carnarvon	,, ,,	Bangor.
Chelmsford	,, ,,	Colchester.
Lancaster	,, ,,	Preston.
Lewes	,, ,,	Brighton.
Monmouth	,, ,,	Newport, Mon.
Stafford	,, ,,	Hanley.
Taunton or Wells	,, ,,	Bridgwater.
Warwick	,, ,,	Birmingham.
Winchester	,, ,,	Southampton.

The entry shall be made in a numbered list to be provided by the district registrar in such vacant number as the party entering shall select, and the list shall be open for the inspection of all parties interested therein at all times during office hours. At the time of entry two copies of the pleadings shall be delivered as directed by Order XXXVI., Rule 17*a*, one of which shall be duly stamped with the amount of the fee payable on entry of the cause for trial.

When the trial of an action or issue which has been entered for trial has been postponed or withdrawn under Order XXIII., Rule 2, or settled, the party who made the entry shall immediately thereupon give notice thereof to the registrar, and such entry shall be expunged from the list.

The registrar shall close the list and transmit a corrected copy of the said list, together with the two copies of the pleadings, to the associate at the assize town in such time that the same may be received at his office before the opening of the commission.

Causes or issues entered for trial by the associate shall be entered in such vacant numbers in the list so transmitted as the party entering may select. The list shall then be re-numbered consecutively, and shall be the cause list for the assizes.

If both parties enter the action or issue for trial, it shall be tried in the order of the plaintiff's entry, and the defendant's entry shall be vacated.

Lists in London and Middlesex.

16. The list or lists of actions for trial at the sittings in London and Middlesex respectively shall be prepared, and the actions shall be allotted for trial, without reference to the Division of the High Court to which such actions may be attached.

As to actions in the Chancery Divisions, see Rule 29*a*, *post*.

R.S.C. Dec. 1875.

17. The first sentence of Order XXXVI., Rule 17, shall be altered as follows:—The party entering the action for trial shall deliver to the officer two copies of the whole of the pleadings in the action, one of which shall be for the use of the Judge. Such copies shall be in print, except as to such parts, if any, of the pleadings as are by these rules permitted to be written.

Default of appearance by defendant.

18. If, when an action is called on for trial, the plaintiff appears, and the defendant does not appear,

then the plaintiff may prove his claim, so far as the burden of proof lies upon him.

It is not necessary now in the Chancery Division, when the defendant does not appear, to prove service of notice of trial; but when the defendant has become bankrupt pending the proceedings, it should be shown that his trustee has been served with a notice under Order L., Rule 5. (*Chorlton* v. *Dickie*, 13 Ch. D. 160.)

Default of appearance by plaintiff.

19. If, when an action is called on for trial, the defendant appears, and the plaintiff does not appear, the defendant, if he has no counter-claim, shall be entitled to judgment dismissing the action; but if he has a counter-claim, then he may prove such claim so far as the burden of proof lies upon him.

It is not necessary for defendant to prove that he has been served with notice of trial, and he is entitled to judgment with costs. (*James* v. *Crow*, 7 Ch. D. 410.)

But when the action had abated, it was merely ordered to be struck out of the list, for Order L., Rule 1, applies only to where the cause of action survives, or continues to some person who is before the Court; and it should be shown that such person has had notice. (*Eldridge* v. *Burgess*, 7 Ch. D. 411.)

It is not intended that a jury should be sworn. (*Lane* v. *Eve*, W. N. 1876, 86.)

Setting aside judgment by default.

20. Any verdict or judgment obtained where one party does not appear at the trial, may be set aside by the Court or a Judge upon such terms as may seem fit, upon an application made within six days after the trial; such application may be made either at the assizes or in Middlesex.

Where judgment has been obtained through an oversight on the part of the solicitor, judgment will be set aside on payment of the costs. (*Burgoine* v. *Taylor*, 9 Ch. D. 1.) Where the solicitor had reasonable ground to expect a compromise, and had deferred delivering briefs to counsel, the action was restored on the same terms as to costs. (*Wright* v. *Clifford*, 26 W. R. 369). Similarly, where one counsel had been unavoidably detained by a railway accident, and the other prevented by indisposition from conducting the case, see the remarks of Fry, J., on *Cockle* v. *Joyce*, in *Burgoine* v. *Taylor*, 9 Ch. D. 3. Where the defendant had personally been guilty of no negligence, and made an application within six days of his having heard that the trial had taken place, the Court granted an extension of time, to enable him to make application to set aside the judgment. (*Michell* v. *Wilson*, 25 W. R. 380.)

Adjournment.

21. The Judge may, if he think it expedient for the interests of justice, postpone or adjourn the trial for such time, and upon such terms, if any, as he shall think fit.

In *Lydall* v. *Martinson*, 5 Ch. D. 780, the terms imposed were that the plaintiffs should pay all the costs that were incurred by the action standing for hearing for those days on which it was placed in the paper.

R.S.C. Dec. 1876. Judgment.

22*a*. Order XXXVI., Rule 22, is hereby repealed, and instead thereof the following rule shall take effect :—

Upon the trial of an action the Judge may, at or after the trial, direct that judgment be entered for any or either party, or adjourn the case for further consideration, or leave any party to move for judgment. No judgment shall be entered after a trial without the order of a Court or Judge.

This rule does not apply to actions remitted to the County Court. The registrar certifies the result of the trial to the Superior Court, and judgment is signed accordingly. (*Scutt* v. *Freeman*, 2 Q. B. D. 177.)

Entry of findings by associate.

23. Upon every trial at the assizes, or at the London and Middlesex sitting of the Queen's Bench, Common Pleas, or Exchequer Division, where the officer present at the trial is not the officer by whom judgments ought to be entered, the associate shall enter all such findings of fact as the Judge may direct to be entered, and the directions, if any, of the Judge as to judgment, and the certificates, if any, granted by the Judge, in a book to be kept for the purpose.

Entry of judgment.

24. If the Judge shall direct that any judgment be entered for any party absolutely, the certificate of the associate to that effect shall be a sufficient authority to the proper officer to enter judgment accordingly. The certificate may be in the Form No. 15 in Appendix (B) hereto.

This certificate corresponds to the old "postea."

Leave to move.

25. If the Judge shall direct that any judgment be entered for any party subject to leave to move, judgment shall be entered accordingly upon the production of the associate's certificate.

Trial without jury.

26. The Court or a Judge may, if it shall appear desirable, direct a trial without a jury of any question or issue of fact, or partly of fact and partly of law, arising in any cause or matter which previously to the passing of the Act could, without any consent of parties, be tried without a jury.

See the whole subject discussed in note to Rule 3, *ante*.

Where the parties to an action agreed that evidence should be taken by affidavit, it was held equivalent to an agreement that the action should be tried without a jury, even in a case peculiarly adapted for a trial before a jury. (*Brooke* v. *Wigg*, 8 Ch. D. 510.)

27. The Court or a Judge may, if it shall appear either before or at the trial that any issue of fact can be more conveniently tried before a jury, direct that such issue shall be tried by a Judge with a jury. Trial with jury.

Actions sent from the Chancery Division must be set down in the general list, to be tried by one of the Judges of the Common Law Divisions; if no place be mentioned they will be tried in Middlesex. (*Warner* v. *Murdock*, 4 Ch. D. 750). And see note to Rule 3, *ante*.)

28. Trials with assessors shall take place in such manner and upon such terms as the Court or a Judge shall direct. Trial with assessors.

29. In any cause the Court or a Judge of the division to which the cause is assigned may, at any time or from time to time, order the trial and determination of any question or issue of fact, or partly of fact and partly of law, by any commissioner or commissioners appointed in pursuance of the 29th section of the said Act, or at the sittings to be held in Middlesex or London, and such question or issue shall be tried and determined accordingly. Discretion to place of trial.

As to actions sent for trial by the Chancery Division, see note to Rule 27, *ante*.

29*a*. Where in any action in the Chancery Division the action or any question at issue in the action is ordered to be tried before any Commissioner or Commissioners of Assize, or at the London or Middlesex sittings of any Division other than the Chancery Division, the order directing such trial shall state on its face the reason for which it is expedient that the action, question, or issue, should be so tried and should not be tried in the Chancery Division. R.S.C. Dec. 1876. Reason for transfer.

Where the action goes of its own accord, so to speak, to be tried at the Middlesex sittings, no special order from the Chancery Judge is necessary. (*Hunt* v. *The London Real Property Company*, 3 Q. B D. 21.)

The mere desire of the parties is not a sufficient reason for directing a trial at the Assizes. (*Wood and Ivery* v. *Hamblet*, 6 Ch. D. 113, in which case Jessel, M.R., directed all the following reasons to be stated on the face of the order :—

Because both sides desire it.

Because the action is one for damages only.

Because it relates to land in Staffordshire.

Because there are a great many witnesses residing in the neighbourhood.

See "Morgan's Acts and Orders," 5th ed., 548.

R.S.C. June, 1876. Rotation of referees.

29*aa*. The business to be referred to the official referees appointed under the Supreme Court of Judicature Act, 1873, shall be distributed among such official referees in rotation by the clerks to the Registrars of the Supreme Court, Chancery Division, in like manner in all respects as the business referred to conveyancing counsel appointed under the Act of the 15th and 16th Vict., cap. 80, section 41, is directed to be distributed by the second of the Consolidated General Orders of the Court of Chancery.

R.S.C. June, 1876. Name of referee to be indorsed.

29*b*. When an Order shall have been made referring any business to the official referee in rotation, such Order, or a duplicate of it, shall be produced to the registrar's clerk, whose duty it is to make such distribution as aforesaid; and such clerk shall (except in the case provided for by Rule 29*c* of this Order), indorse thereon a note specifying the name of the official referee in rotation to whom such business is to be referred; and the Order so indorsed shall be a sufficient authority for the official referee to proceed with the business so referred.

R.S.C. June, 1876. Order may specify particular referee.

29*c*. The two last preceding rules of this Order are not to interfere with the power of the Court, or of the Judge at Chambers, to direct or transfer a reference to any one in particular of the said official referees, where it appears to the Court or the Judge to be expedient; but every such reference or transfer shall be recorded in the manner mentioned in Rule 2 of the second of the said Consolidated General Orders, and a note to that effect be endorsed on the order of reference or transfer; and in case any such reference or transfer shall have been or shall be made to any one in particular of the said referees, then the clerk in making the distribution of the business according to such rotation as aforesaid shall have regard to any such reference or transfer.

Trial before referee.

30. Where any cause or matter, or any question in any cause or matter, is referred to a referee, he may, subject to the order of the Court or a Judge, hold the trial at or adjourn it to any place which he may deem most convenient, and have any inspection or view, either by himself or with his assessors (if any), which he may deem expedient for the better disposal of the controversy before him. He shall, unless otherwise directed by the Court or a Judge, proceed with the trial *de die in diem*, in a similar manner as in actions tried by a jury.

The words as to sitting *de die in diem* are directory and not imperative, and a neglect to do so, acquiesced in by either party, will prevent them taking advantage of the misconduct of the referee. (*Robinson* v. *Robinson*, 24 W. R. 675.) See also note to section 56 of the Act of 1873.)

Procedure before referee.

31. Subject to any order to be made by the Court or Judge ordering the same, evidence shall be taken at any trial before a referee, and the attendance of witnesses may be enforced by subpœna, and every such trial shall be conducted in the same manner, as nearly as circumstances will admit, as trials before a Judge of the High Court, but not so as to make the tribunal of the referee a public court of justice.

Authority of referee.

32. Subject to any such order as last aforesaid, the referee shall have the same authority in the conduct of any reference or trial as a Judge of the High Court when presiding at any trial before him.

This does not give an official referee power to order judgment to be entered. (*Longman* v. *East*, 3 C. P. D. 142.)

If an order made in the course of the proceedings before a referee be wrong, it may be properly brought before the Judge, and the Judge alone can enforce an order for discovery. (*Rowcliffe* v. *Leigh*, 25 W. R. 56.)

No power to commit.

33. Nothing in these Rules contained shall authorise any referee to commit any person to prison or to enforce any order by attachment or otherwise.

R.S.C. March, 1879

34. Rule 34 is hereby annulled, and the following shall stand in lieu thereof.

General powers.

The referee may, before the conclusion of any trial before him, or by his report under the reference made to him, submit any question arising therein for the decision of the Court, or state any facts specially, with power to the Court to draw inferences therefrom, and in any such case the order to be made on such submission or statement shall be entered as the Court may direct; and the Court shall have power to require any explanation or reasons from the referee, and to remit the cause or matter, or any part thereof, for re-trial or further consideration to the same or any other referee; or the Court may decide the question referred to any referee on the evidence taken before him, either with or without additional evidence as the Court may direct.

An application to have the decision of the official referee reviewed must be supported by affidavit, or some evidence of what took place at the trial, other than the statement of counsel. (*Stubbs* v. *Boyle*, 2 Q. B. D. 124.)

When he has made a report, an application to show cause why the issues should not be remitted to him for further consideration, should be within the time limited for moving against the verdict of a jury. (*Sullivan* v. *Rivington*, 28 W. R. 372.)

ORDER XXXVII.

Evidence Generally.

Vivâ voce and by affidavit.

1. In the absence of any agreement between the parties, and subject to these rules, the witnesses at the trial of any action or at any assessment of damages, shall be examined *vivâ voce* and in open court, but the Court or a Judge may at any time for sufficient reason order that any particular fact or facts may be proved by affidavit, or that the affidavit of any witness may be read at the hearing or trial, on such conditions as the Court or Judge may think reasonable, or that any witness whose attendance in Court ought for some sufficient cause to be dispensed with, be examined by interrogatories or otherwise before a commissioner or examiner; provided that where it appears to the Court or Judge that the other party *bonâ fide* desires the production of a witness for cross-examination, and that such witness can be produced, an order shall not be made authorising the evidence of such witness to be given by affidavit.

The consent to take evidence by affidavit must be a formal written consent, and not one to be gathered from a correspondence between the parties. (*New Westminster Brewery Co.* v. *Hannah*, 1 Ch. D. 278); and may be given by the guardian *ad litem*, (*Knatchbull* v. *Fowle*, 1 Ch. D. 604.)

Where it is agreed to take evidence by affidavit, it is equivalent to an agreement to try before a Judge alone. (*Brooke* v. *Wigg*, 8 Ch. D. 510.)

When the production of a witness for cross-examination is insisted upon, the Court has no power to order an affidavit to be read at the trial, which has been used on a previous occasion. (*The Blackburn Union* v. *Brooks*, 7 Ch. D. 68.)

Office copies of affidavits, which had been deemed sufficient evidence in the Probate and Chancery Divisions, were taken as sufficient proof of the death of the party mentioned therein. (*Re Woolley's Trust*, 24 W. R. 783.)

Affidavits sworn in one action may be read as evidence in another, against such of the defendants as are parties to both. (*Brown* v. *White*, 24 W. R. 456.)

The President of the Probate Division has declined to allow the execution of a will to be proved by affidavit, when the action was to prove the will in solemn form. Although the value of the property was extremely small (*Cook* v. *Tomlinson*, 24 W. R. 851). Where a party improperly withheld his consent to the use of

affidavits, he was directed to pay the costs of an unsuccessful application by the other party to use them. (*Patterson* v. *Wooler*, 2 Ch. D. 586.) This was under very exceptional circumstances.

On motion.

2. Upon any motion, petition, or summons evidence may be given by affidavit; but the Court or a Judge may, on the application of either party, order the attendance for cross-examination of the person making any such affidavit.

Where the evidence under 15 & 16 Vict. c. 86, s. 32, was not "taken down in writing by the examiner," with his own hand, Hall, V.-C., allowed the affidavits to be filed, as the representative of the opposite party, who was present, raised no objection to the course pursued. (*Bolton* v. *Bolton*, 2 Ch. D. 217.)

Affidavit of belief.

3. Affidavits shall be confined to such facts as the witness is able of his own knowledge to prove, except on interlocutory motions, on which statements as to his belief, with the grounds thereof, may be admitted. The costs of every affidavit which shall unnecessarily set forth matters of hearsay, or argumentative matter, or copies of or extracts from documents, shall be paid by the party filing the same.

In proceedings which finally decide the rights of parties, evidence on "information and belief" is not admissible, though their form be interlocutory. (*Gilbert* v. *Endeau*, 9 Ch. D. 260.)

Form of affidavits. R.S.C. April, 1880.

3*a*. Every affidavit shall be drawn up in the first person, and shall be divided into paragraphs, and every paragraph shall be numbered consecutively, and as nearly as may be shall be confined to a distinct portion of the subject. Every affidavit shall be written or printed bookwise. No costs shall be allowed for any affidavit or part of an affidavit substantially departing from this rule.

Description and address of deponent to be stated. R.S.C. April 1880.

3*b*. Every affidavit shall state the description and true place of abode of the deponent.

Affidavits made by two or more deponents. R.S C. April 1880.

3*c*. In every affidavit made by two or more deponents the names of the several persons making the affidavit shall be inserted in the jurat, except that if the affidavit of all the deponents is taken at one time by the same officer it shall be sufficient to state that it was sworn by both (or all) of the "above-named" deponents.

Affidavit to be filed. R.S.C. April 1880.

3*d*. Every affidavit shall be filed in the Central Office. There shall be appended to every affidavit a note showing on whose behalf it is filed.

See Rule 16 of Order XXXV., *ante*.

Alterations in affidavits. R.S.C. April, 1880.

3*e*. No affidavit having in the jurat or body thereof any interlineations, alteration, or erasure shall without leave of the Court or a Judge be read or made use of in any matter depending in Court unless the interlineation or alteration (other than by erasure) is authenticated by the initials of the officer taking the affidavit, or, if taken at the central office, either by his initials or by the stamp of that office, nor in the case of an erasure, unless the words or figures appearing at the time of taking the affidavit to be written on the erasure are re-written and signed or initialled in the margin of the affidavit by the officer taking it.

Affidavits by illiterate persons. R.S.C. April, 1880.

3*f*. Where an affidavit is sworn by any person who appears to the officer taking the affidavit to be illiterate, the officer shall certify in the jurat that the affidavit was read in his presence to the deponent, that the deponent seemed perfectly to understand it, and that the deponent made his or her signature in the presence of the officer. No such affidavit shall be used in evidence in the absence of this certificate, unless the Court or a Judge is otherwise satisfied that the affidavit was read over to and apparently perfectly understood by the deponent.

Stamping of affidavits, and use of office copies. R.S.C. April, 1880.

3*g*. In cases in which by the present practice an original affidavit is allowed to be used, it shall before it is used be stamped with a proper filing stamp, and shall at the time when it is used be delivered to and left with the proper officer in Court or in Chambers, who shall send it to the central office. An office copy of an affidavit may in all cases be used, the original affidavit having been previously filed in the central office, and the copy duly authenticated with the seal of that office.

Depositions.

4. The Court or a Judge may, in cause or matter where it shall appear necessary for the purposes of justice, make any order for the examination upon oath before any officer of the Court, or any other person or persons, and at any place, of any witness or person, and may order any deposition so taken to be filed in the Court, and may empower any party to any such cause or matter to give such deposition in evidence therein on such terms, if any, as the Court or a Judge may direct.

In *The Moxham*, 1 P. D. 107, a commission to take evidence in Spain as to the law of Spain was refused, as it was not shown

that competent Spanish advocates could not attend here without difficulty.

The examiner's office is not a public Court which any person may enter. By 15 & 16 Vict. c. 86, the examination is to be held in the presence of the parties, their counsel, solicitors, or agents. That means that all other persons are excluded. (Per Jessel, M. R., in *Re Western of Canada Oil Co.*, 25 W. R. 787.)

ORDER XXXVIII.

Evidence by Affidavit.

Time for filing by plaintiff.

1. Within fourteen days after a consent for taking evidence by affidavit as between the plaintiff and the defendant has been given, or within such time as the parties may agree upon, or a Judge in Chambers may allow, the plaintiff shall file his affidavits and deliver to the defendant or his solicitor a list thereof.

The consent must be in writing (*New Westminster Brewery Co.* v. *Hannah*, 1 Ch. D. 278); and may be given by the guardian *ad litem* of an infant (*Knatchbull* v. *Fowle*, 1 Ch. D. 604); and see further, note to Order XXXVII. Rule 1.

As to affidavits in an English suit sworn before a Juge de Paix in Belgium, see *Kevan* v. *Crawford*, 45 L. J. 658.

Time for filing by defendant.

2. The defendant within fourteen days after delivery of such list, or within such time as the parties may agree upon, or a Judge in Chambers may allow, shall file his affidavits and deliver to the plaintiff or his solicitor a list thereof.

Where the parties make an agreement under Rule 1 to take the evidence by affidavit, if their agreement does not specify that the evidence should be taken upon affidavit alone, a witness present in Court who had made an affidavit before will be allowed to supplement that evidence by *viva voce* evidence. (*Glossop* v. *Heston Local Board*, W. N. 1878, 72.)

Time for affidavits in reply.

3. Within seven days after expiration of the said fourteen days, or such other time as aforesaid, the plaintiff shall file his affidavits in reply, which affidavits shall be confined to matters strictly in reply, and shall deliver to the defendant or his solicitor a list thereof.

Affidavits in reply may bring forward additional evidence in support of the original case, and are not restricted by this rule to the points raised by the defendant's evidence. (*Peacock* v. *Harper*, 26 W. R. 109.)

Notice to cross-examine on affidavits.

4. When the evidence is taken by affidavit, any party desiring to cross-examine a deponent who has made an affidavit filed on behalf of the opposite party, may serve upon the party by whom such affidavit has

been filed, a notice in writing, requiring the production of the deponent for cross-examination before the Court at the trial, such notice to be served at any time before the expiration of fourteen days next after the end of the time allowed for filing affidavits in reply, or within such time as in any case the Court or a Judge may specially appoint; and unless such deponent is produced accordingly, his affidavit shall not be used as evidence unless by the special leave of the Court. The party producing such deponent for cross-examination shall not be entitled to demand the expenses thereof in the first instance from the party requiring such production.

In *Meyrick* v. *James*, 46 L. J. Ch. 579, Jessel, M. R., refused an application to strike off the file the affidavit of a witness, who has failed to appear, and be cross-examined before an examiner, because his affidavit could not be used except by the special leave of the Court under this rule.

Attendance, how enforced.

5. The party to whom such notice as is mentioned in the last preceding rule is given, shall be entitled to compel the attendance of the deponent for cross-examination in the same way as he might compel the attendance of a witness to be examined.

Affidavit to be printed.

6. When the evidence in any action is under this order taken by affidavit, such evidence shall be printed, and the notice of trial shall be given at the same time or times after the close of the evidence as in other cases is by these Rules provided after the close of the pleadings.

This rule as regards time does not apply when the evidence filed after notice of trial is taken under a Judge's Order. (*Waring* v. *Lacey*, 24 W. R. 318.) As to printing affidavits see R. S. C. (costs), Orders I.—III.

ORDER XXXIX.

New Trial.

R.S.C. Dec. 1876. Application for.

1. Order XXXIX., Rule 1, is hereby repealed, and instead thereof the following provision shall take effect:—

Where, in an action in the Queen's Bench, Common Pleas, or Exchequer Division, there has been a trial by a jury, any application for a new trial shall be to a Divisional Court. And where the trial has been by a Judge, without a jury, the application for a new trial shall be to the Court of Appeal.

If the findings of the Jury are unquestioned, and the objection is to the verdict entered thereon, the application should be to the Court of Appeal. (*Davies* v. *Felix*, 4 Ex. D. 32. See Order XL., Rule 4, *post*.)

Where the trial has been by a Judge without a Jury, the application is to the Court of Appeal, no matter what the ground may be. (*Oastler* v. *Henderson*, 2 Q. B. D. 575.)

And in all cases except that of surprise the Court of Appeal may review the findings of fact without a rule for a new trial having been obtained. (*Jones* v. *Hough*, 5 Ex. D. 115.)

Unless the Judge sitting without a jury finds a separate verdict on the facts, there cannot be a motion for a new trial. (*Dollman* v. *Jones*, 12 Ch. D. 553; *Lowe* v. *Lowe*, 10 Ch. D. 402; *Potter* v. *Cotton*, 5 Ex. D. 137.)

Where the Judge at *Nisi Prius* directed the jury to find for the plaintiff, held that the defendant should move the Divisional Court for a new trial on the ground of misdirection. (*Yetts* v. *Foster*, 3 C. P. D. 437.)

This rule does not apply to an action remitted to the County Court. (*Davis* v. *Godbehere*, 48 L. J., 441; *London* v. *Roffey*, 3 Q. B. D. 6.)

1*a*. Rule 1*a* is hereby annulled, and the following shall stand in lieu thereof:— R.S.C. March, 1879.

Applications for new trials shall be by motion calling on the opposite party to show cause at the expiration of eight days from the date of the Order, or so soon after as the case can be heard, why a new trial should not be directed. Such motion shall be made within the times following, unless the Court, or a Judge, shall enlarge the time:— Time for.

An application to a Divisional Court for a new trial, if the trial has taken place in London or Westminster, shall be made within four days after the trial, or on the first subsequent day on which a Divisional Court, to which the application may be made, shall have actually sat to hear motions. If the trial has taken place elsewhere than in London or Middlesex, the motion shall be made within seven days after the last day of sitting on the circuits for England and Wales during which the action shall have been tried, or within the first four days of the next following sittings, if such day occurs during or within a week immediately before a vacation.

This rule includes actions transferred from the Chancery Division for the purpose of trial. (*Hunt* v. *The London Real Property Co.*, 3 Q. B. D. 19.)

The time for an application on the ground of misdirection is reckoned from the discharge of the jury, notwithstanding that the Judge has reserved the case for further consideration. (*Shaw* v. *Hope*, 25 W. R., 729.)

In *Jenkins* v. *Morris*, W. N., 1880, 86, an application for a new trial was made, not to the Divisional Court, but to the Vice-

Chancellor, who refused the rule. On the rule *nisi* coming on for argument in the Court of Appeal, the objection was waived and the Court heard the motion.

Where one of two defendants has obtained a rule for a new trial, he must serve notice of it on the other, and should he appeal against the Divisional Court, he must serve his co-defendant with notice of the appeal. (*Purnell* v. *The Great Western Ry. Co.*, 1 Q. B. D. 636.) The question was also mooted whether the Court might not direct a new trial as to one defendant without disturbing the verdict as to the other. (*Ibid.*)

The Court of Appeal has no jurisdiction to entertain an appeal from an order of the President of the Divorce Court, refusing or granting a rule to show cause for a new trial; the appeal must still be to the full Court of Divorce. (*Westhead* v. *Westhead*, 2 P. D. 1; *Robinson* v. *Robinson*, *Ibid.* 77; *Wallis* v. *Wallis*, *Ibid.* 141; *Gladstone* v. *Gladstone*, *Ibid.* 143.)

Service of copy order.

2. A copy of such order shall be served on the opposite party within four days from the time of the same being made.

On substantial grounds only.

3. A new trial shall not be granted on the ground of misdirection or of the improper admission or rejection of evidence, unless in the opinion of the Court to which the application is made some substantial wrong or miscarriage has been thereby occasioned in the trial of the action; and if it appear to such Court that such wrong or miscarriage affects part only of the matter in controversy, the Court may give final judgment as to part thereof, and direct a new trial as to the other part only.

If the damages found by the jury are so small as to show that they must have omitted to consider some of the elements of damage, the Court will grant a new trial. (*Phillips* v. *L. & S.-W. Railway Co.*, 5 Q. B. D. 78.) Where a new trial is moved for on the ground of misdirection, the onus of showing that the misdirection did not cause a miscarriage of justice lies upon the party showing cause. (*Anthony* v. *Halstead*, 37 L. T. 433.)

On one question only.

4. A new trial may be ordered on any question in an action, whatever be the grounds for the new trial, without interfering with the finding or decision upon any other question.

The Judge may accept the verdict of the jury upon those issues on which they are agreed, and discharge them upon the others, leaving the parties to have a new trial if they think fit on those undecided. (*Marsh* v. *Isaacs*, 45 L. J. 505.)

Stay of proceedings.

5. An order to show cause shall be a stay of proceedings in the action, unless the Court shall order that it shall not be so as to the whole or any part of the action.

A rule *nisi* for a new trial granted by the Court of Appeal should not be drawn up so as to include a stay of proceedings. The appellant should apply to a Master in Chambers for a stay. (*Goddard* v. *Thompson*, 26 W. R. 362.)

ORDER XL.

Motion for Judgment.

Judgment, how obtained by motion.

1. Except where by the Act or by these rules it is provided that judgment may be obtained in any other manner, the judgment of the Court shall be obtained by motion for judgment.

The following directions as to short causes may be found useful. They are given in the W. N. 1877, Pt. ii. p. 58 :—

CHANCERY DIVISION.—NOTICE.

The Master of the Rolls and the Vice-Chancellors have given directions that motions for judgment in actions shall not be brought on as ordinary motions, but shall be set down in the cause book. They can be marked short on production of the usual certificate of counsel, and will then be placed on the paper on the first short cause day after the day for which notice is given. If not marked short, they will come into the general paper in their regular turn. It will be advisable that the notices of motion for judgment should, if it is intended to mark them short, contain a statement to that effect, and also a statement that no further notice will be given of their having been so marked. Such statement will dispense with the necessity for giving defendants further notice that motions for judgment have been marked short. Where defendant makes his defence, and the plaintiff moves under Order XL., Rule 11, for such order as he is entitled to on the admissions of the defendant, the action need not be set down; but if, on the motion being made, it appears that there must be a discussion or argument, it may be ordered to go into the General Paper, subject to any order for its being advanced. The attention of solicitors is also called to the provisions in the Judicature Rules as to notices of trial. As notice of trial can only be given after issue joined, the proper course where there are no pleadings is to set the action down on motion for judgment under Order XL., Rule 1.

With regard to short cases, Malins, V. C., has laid down a rule, that where there are no pleadings the writ and the notice of motion should be left with the officer of the Court in the same manner that papers in ordinary short causes are left. (*Oliver* v. *Wright*, W. N. 1877, 80.)

In actions remitted to the County Court, judgment is signed on the certificate of the registrar. (*Scutt* v. *Freeman*, 2 Q. B. D. 177.)

Notice, where leave reserved.

2. Where at the trial of an action the Judge or a referee has ordered that any judgment be entered subject to leave to move, the party to whom leave has been reserved shall set down the action on motion for judgment and give notice thereof to the other parties

within the time limited by the Judge in reserving leave, or if no time has been limited, within ten days after the trial. The notice of motion shall state the grounds of the motion, and the relief sought, and that the motion is pursuant to leave reserved.

Notice where no leave reserved.

3. Where at the trial of an action the Judge or referee abstains from directing any judgment to be entered, the plaintiff may set down the action on motion for judgment. If he does not so set it down and give notice thereof to the other parties within ten days after the trial, any defendant may set down the action on motion for judgment, and give notice thereof to the other parties.

R.S.C. Dec. 1876.

4. Order XL., Rules 4 and 6 are repealed, and Rule 5 is repealed so far as it affects trials before a Judge; and the following Rule shall be substituted for Rule 4:—

Application to set aside judgment.

Where, at or after the trial of an action by a jury, the Judge has directed that any judgment be entered, any party may, without any leave reserved, apply to set aside such judgment and enter any other judgment, on the ground that the judgment directed to be entered is wrong by reason of the Judge having caused the finding to be wrongly entered with reference to the finding of the jury upon the question or questions submitted to them.

Where, at or after the trial of an action before a Judge, the Judge has directed that any judgment be entered, any party may, without any leave reserved, apply to set aside such judgment and to enter any other judgment, upon the ground that, upon the finding as entered, the judgment so directed is wrong.

An application under this rule shall be to the Court of Appeal.

On a motion for a new trial by force of Rule 10, *post*, the Divisional Court has power, when the materials are before it, to enter another judgment on the ground that upon the findings the judgment entered is wrong. (*Hamilton* v. *Johnson*, 5 Q. B. D. 263); and the findings of fact may be reviewed without a rule for a new trial having been obtained except in the case of surprise. (*Jones* v. *Hough*, 5 Ex. D. 115.)

But it must be shown that the judgment was entered wrongly with reference to the findings of the jury, otherwise the application should be to the Divisional Court to set aside the verdict, and for a new trial (*Davies* v. *Felix*, 4 Ex. D. 32); or if there be no finding the plaintiff being non-suit (*Etty* v. *Wilson*, 3 Ex. D. 359); or if the Judge direct the jury to find a certain verdict (*Yetts* v. *Foster*, 3 C. P. D. 437).

Where a Judge has directed judgment to be entered on an interpleader issue, an appeal lies to the Court of Appeal under this rule. (*Witt* v. *Parker*, 25 W. R. 518.)

An application to the Court of Appeal is on notice. (*Jones* v. *Davis*, 36 L. T. 415.)

R.S.C. Dec. 1876.

5. Where at the trial of an action a referee has directed that any judgment be entered, any party may, without any leave reserved, move to set aside such judgment, and to enter any other judgment, on the ground that upon the finding as entered the judgment so directed is wrong.

A referee has no power to enter judgment. (*Pontifex* v. *Severn*, 3 C. P. D. 142.)

Unless the parties can by consent clothe him with that power, which is extremely dubious, this rule is nugatory.

6. Repealed by R. S. C., Dec. 1876.

Motion for judgment when issues determined.

7. Where issues have been ordered to be tried, or issues or questions of fact to be determined in any manner, the plaintiff may set down the action on motion for judgment as soon as such issues or questions have been determined. If he does not so set it down, and give notice thereof to the other parties within ten days after his right so to do has arisen, then after the expiration of such ten days any defendant may set down the action on motion for judgment, and give notice thereof to the other parties.

Where some issues only determined.

8. Where issues have been ordered to be tried, or issues or questions of fact to be determined in any manner, and some only of such issues or questions of fact have been tried or determined, any party who considers that the result of such trial or determination renders the trial or determination of the others of them unnecessary, or renders it desirable that the trial or determination thereof should be postponed, may apply to the Court or a Judge for leave to set down the action on motion for judgment, without waiting for such trial or determination. And the Court or Judge may, if satisfied of the expediency thereof, give such leave, upon such terms, if any, as shall appear just, and may give any directions which may appear desirable as to postponing the trial of the other questions of fact.

Where an order was taken by the consent of the parties to determine certain issues of fact in a manner which the Judge afterwards held to be beyond the powers of the Court, Jessel, M.R., refused to proceed with the trial, on the ground that any decision founded upon this consent order, would not be binding upon the parties. (*Republic of Bolivia* v. *National Bol. Co.*, 24 W. R. 361.)

Limitation of time for moving.

9. No action shall, except by leave of the Court or a Judge, be set down on motion for judgment after the expiration of one year from the time when the party seeking to set down the same first became entitled so to do.

Powers of Court.

10. Upon a motion for judgment, or for a new trial, the Court may, if satisfied that it has before it all the materials necessary for finally determining the questions in dispute, or any of them, or for awarding any relief sought, give judgment accordingly, or may, if it shall be of opinion that it has not sufficient materials before it to enable it to give judgment, direct the motion to stand over for further consideration, and direct such issues or questions to be tried or determined, and such accounts and inquiries to be taken and made as it may think fit.

In the Chancery Division the motion need not be set down; an order may be made upon notice of motion "for a decree or decretal order." (*Hetherington* v. *Longrigg*, 10 Ch. D. 162; and see *Hamilton* v. *Johnson*, Rule 4, *ante*.)

Order on admissions.

11. Any party to an action may at any stage thereof apply to the Court or a Judge for such order as he may, upon any admissions of fact in the pleadings, be entitled to, without waiting for the determination of any other question between the parties. The foregoing rules of this Order shall not apply to such applications, but any such application may be made by motion, so soon as the right of the party applying to the relief claimed has appeared from the pleadings. The Court or a Judge may, on any such application, give such relief, subject to such terms, if any, as such Court or Judge may think fit.

In the Chancery Division the motion need not be set down. (See *Hetherington* v. *Longrigg*, 10 Ch. D. 162, note to Rule 10, *ante*.)

The exercise of the power given by the Rule is discretionary. (*Mellor* v. *Sidebottom*, 25 W. R. 401.)

A motion may be made under this rule against one defendant, who has not appeared; and others whose defence contains admissions entitling the plaintiff to relief. (*Parsons* v. *Harris*, 6 Ch. D. 694.)

Under this rule, in a partition action, an inquiry was directed as to the persons interested. (*Gilbert* v. *Smith*, 2 Ch. D. 686; and in *Burnell* v. *Burnell*, 11 Ch D. 213, an order for sale was made.)

An order was made for taking the accounts of partnership dealings. (*Turquand* v. *Wilson*, 1 Ch. D. 85.)

In *Rumsey* v. *Beade*, 1 Ch. D. 643, the agent of the trustees of a will was ordered to deliver up all securities relating to the

testator's estate, and to account for all sums received on behalf of the estate. For a dissolution of partnership see *Thorp* v. *Holdsworth*, 3 Ch. D. 637.

In an action against husband and wife on a joint and several promissory note, judgment was given against the husband alone. (*Jenkins* v. *Davies*, 1 Ch. D. 696.)

A defendant who seeks to dismiss an action on the ground that the plaintiff, not having replied within the proper time, must be taken to have admitted the defence, is not a "party applying for relief" within the meaning of this rule. (*Litton* v. *Litton*, 3 Ch. D. 793.)

For form of Order reserving further consideration, see *Gilbert* v. *Smith*, 2 Ch. D. 686; *Bennett* v. *Moore*, 1 Ch. D. 692.

ORDER XLI.

Entry of Judgment.

How effected.

1. Every judgment shall be entered by the proper officer in the book to be kept for the purpose. The party entering the judgment shall deliver to the officer a copy of the whole of the pleadings in the action other than any petition or summons; such copy shall be in print, except such parts (if any) of the pleadings as are by these Rules permitted to be written: Provided that no copy need be delivered of any pleading a copy of which has been delivered on entering any previous judgment in such action. The forms in Appendix (D) hereto may be used, with such variations as circumstances may require.

Judgments when to be entered in central office. R.S.C. April, 1880.

1*a*. All judgments in the Queen's Bench, Common Pleas, and Exchequer Divisions shall, if entered in London, be entered in the central office.

Date of entry, judgment in Court.

2. Where any judgment is pronounced by the Court or a Judge in Court, the entry of the judgment shall be dated as of the day on which such judgment is pronounced, and the judgment shall take effect from that date.

Other cases.

3. In all cases not within the last preceding rule, the entry of judgment shall be dated as of the day on which the requisite documents are left with the proper officer for the purpose of such entry, and the judgment shall take effect from that date.

Regulations for entry of.

4. Where under the Act or these rules, or otherwise, it is provided that any judgment may be entered or signed upon the filing of any affidavit or production of any document, the officer shall examine the

affidavit or document produced, and if the same be regular and contain all that is by law required he shall enter judgment accordingly.

Entry on certificate.

5. Where by the Act or these rules, or otherwise, any judgment may be entered pursuant to any order or certificate, or return to any writ, the production of such order or certificate sealed with the seal of the Court, or of such return, shall be a sufficient authority to the officer to enter judgment accordingly.

Judgment on nonsuit.

6. Any judgment of nonsuit, unless the Court or a Judge otherwise directs, shall have the same effect as a judgment upon the merits for the defendant; but in any case of mistake, surprise, or accident, any judgment of nonsuit may be set aside on such terms, as to payment of costs and otherwise, as to the Court or a Judge shall seem just.

ORDER XLIA.

AMENDMENTS OF JUDGMENTS.

R.S.C. Dec. 1879.

Clerical mistakes in judgments or orders, or errors arising therein from any accidental slip or omission, may at any time be corrected by the Court or a Judge on motion without an appeal.

ORDER XLII.

EXECUTION.

Judgment debt.

1. A judgment for the recovery by or payment to any person of money may be enforced by any of the modes by which a judgment or decree for the payment of money of any Court whose jurisdiction is transferred by the said Act might have been enforced at the time of the passing thereof.

For payment into Court.

2. A judgment for the payment of money into Court may be enforced by writ of sequestration, or in cases in which attachment is authorised by law, by attachment.

See note to Order XLVII., Rule 1, *post*.

In *Ex parte Nelson, Re Hoare* (W.N. 1880, 42), their Lordships expressed great doubt whether a sequestration could be properly issued to enforce a simple judgment for a debt.

3. A judgment for the recovery or for the delivery of the possession of land may be enforced by writ of possession. For the recovery of land.

4. A judgment for the recovery of any property other than land or money may be enforced :— For other property.

By writ for delivery of the property;
By writ of attachment;
By writ of sequestration.

5. A judgment requiring any person to do any act other than the payment of money, or to abstain from doing anything, may be enforced by writ of attachment, or by committal. Attachment for contempt.

On a notice of motion to commit the defendant, Malins, V. C. ordered a writ of attachment to issue against him. (*Piper* v. *Piper*, W. N. 1876, 202.)

6. In these rules the term "writ of execution" shall include writs of fieri facias, capias, elegit, sequestration, and attachment, and all subsequent writs that may issue for giving effect thereto. And the term "issuing execution against any party" shall mean the issuing of any such process against his person or property as under the preceding rules of this Order shall be applicable to the case. Writ of execution. Definition.

7. Where a judgment is to the effect that any party is entitled to any relief subject to or upon the fulfilment of any condition or contingency, the party so entitled may, upon the fulfilment of the condition or contingency, and demand made upon the party against whom he is entitled to relief, apply to the Court or a Judge for leave to issue execution against such party. And the Court or Judge may, if satisfied that the right to relief has arisen according to the terms of the judgment, order that execution issue accordingly, or may direct that any issue or question necessary for the determination of the rights of the parties be tried in any of the ways in which questions arising in an action may be tried. Contingent judgment.

8. Where a judgment is against partners in the name of the firm, execution may issue in manner following :— Partners.

(*a.*) Against any property of the partners as such;

(*b.*) Against any person who has admitted on the pleadings that he is, or has been adjudged to be a partner;

(*c.*) Against any person who has been served, as a partner, with the writ of summons, and has failed to appear.

If the party who has obtained judgment claims to be entitled to issue execution against any other person as being a member of the firm, he may apply to the Court or a Judge for leave so to do; and the Court or Judge may give such leave if the liability be not disputed, or if such liability be disputed, may order that the liability of such person be tried and determined in any manner in which any issue or question in an action may be tried and determined.

Writ, how issued.

9. No writ of execution shall be issued without the production to the officer by whom the same should be issued, of the judgment upon which the writ of execution is to issue, or an office copy thereof, showing the date of entry. And the officer shall be satisfied that the proper time has elapsed to entitle the judgment creditor to execution.

Præcipe.

10. No writ of execution shall be issued without the party issuing it, or his solicitor, filing a præcipe for that purpose. The præcipe shall contain the title of the action, the reference to the record, the date of the judgment, and of the order, if any, directing the execution to be issued, the names of the parties against whom, or of the firms against whose goods, the execution is to be issued; and shall be signed by or on behalf of the solicitor of the party issuing it, or by the party issuing it, if he do so in person. The forms in Appendix (E) hereto may be used, with such variations as circumstances may require.

R.S.C. June, 1876.

Indorsement of writ with solicitor's name.

11. Every writ of execution shall be indorsed with the name and place of abode or office of business of the solicitor actually suing out the same, and when the solicitor actually suing out the writ shall sue out the same as agent for another solicitor, the name and place of abode of such other solicitor shall also be indorsed upon the writ; and in case no solicitor shall be employed to issue the writ, then it shall be indorsed

with a memorandum expressing that the same has been sued out by the plaintiff or defendant in person, as the case may be, mentioning the city, town, or parish, and also the name of the hamlet, street, and number of the house of such plaintiff's or defendant's residence, if any such there be.

Must bear date.

12. Every writ of execution shall bear date of the day on which it is issued. The forms in Appendix (F) hereto may be used, with such variations as circumstances may require.

Poundage and expenses.

13. In every case of execution the party entitled to execution may levy the poundage, fees, and expenses of execution, over and above the sum recovered.

Indorsement for principal and interest.

14. Every writ of execution for the recovery of money shall be indorsed with a direction to the sheriff, or other officer or person to whom the writ is directed, to levy the money really due and payable and sought to be recovered under the judgment, stating the amount, and also to levy interest thereon, if sought to be recovered, at the rate of 4*l.* per cent. per annum from the time when the judgment was entered up, provided that in cases where there is an agreement between the parties that more than 4*l.* per cent. interest shall be secured by the judgment, then the indorsement may be accordingly to levy the amount of interest so agreed.

Interest on costs now runs from the date of the Master's certificate of taxation. (*Schrœder* v. *Cleugh*, 46 L. J. 365.)

Fi. fa. and elegit.

15. Every person to whom any sum of money or any costs shall be payable under a judgment, shall immediately after the time when the judgment was duly entered, be entitled to sue out one or more writ or writs of fieri facias or one or more writ or writs of elegit to enforce payment thereof, subject nevertheless as follows:—

(*a.*) If the judgment is for payment within a period therein mentioned, no such writ as aforesaid shall be issued until after the expiration of such period.

(*b.*) The Court or Judge at the time of giving judgment, or the Court or a Judge afterwards, may give leave to issue execution before, or may stay execution until any time

after the expiration of the periods hereinbefore prescribed.

The recovery of costs, payable under an order, will not be stayed by the Court of Appeal, pending an appeal to the House of Lords, if the solicitors, to whom they are payable, give their personal undertaking to refund, in case of the order being reversed. (*Grant* v. *Banco Franco-Egyptienne*, 3 C. P. D. 202; *Morgan* v. *Elford*, 4 Ch. D. 353; *The Khedive*, 5 P. D. 1.) The Court of Appeal is the proper Court, to which to apply to suspend any order, which that Court has made; consequently the application should be to it, to stay proceedings under its own order, pending an appeal to the House of Lords. (*Ibid.*)

Execution on judgment in Chancery division. R.S.C. April, 1880.

15*a*. Upon any judgment drawn up by the Chancery Registrars for the recovery of a sum of money and costs, there may continue to be, at the election of the claimant, either one writ or separate writs of execution for the recovery of the sum and for the recovery of the costs; but a second writ shall only be for costs and shall be issued not less than eight days after the first writ.

Duration and renewal of writ.

16. A writ of execution if unexecuted shall remain in force for one year only from its issue, unless renewed in the manner hereinafter provided; but such writ may, at any time before its expiration, by leave of the Court or a Judge, be renewed, by the party issuing it, for one year from the date of such renewal, and so on from time to time during the continuance of the renewed writ, either by being marked with a seal of the Court bearing the date of the day, month, and year of such renewal, or by such party giving a written notice of renewal to the sheriff, signed by the party or his attorney, and bearing the like seal of the Court; and a writ of execution so renewed shall have effect, and be entitled to priority, according to the time of the original delivery thereof.

Evidence of renewal.

17. The production of a writ of execution, or of the notice renewing the same, purporting to be marked with such seal as in the last preceding rule mentioned, showing the same to have been renewed, shall be sufficient evidence of its having been so renewed.

Judgment runs for six years.

18. As between the original parties to a judgment, execution may issue at any time within six years from the recovery of the judgment.

Judgment after six years.

19. Where six years have elapsed since the judgment, or any change has taken place by death or

otherwise in the parties entitled or liable to execution, the party alleging himself to be entitled to execution may apply to the Court or a Judge for leave to issue execution accordingly. And such Court or Judge may, if satisfied that the party so applying is entitled to issue execution, make an order to that effect, or may order that any issue or question necessary to determine the rights of the parties, shall be tried in any of the ways in which any question in an action may be tried. And in either case such Court or Judge may impose such terms as to costs or otherwise, as shall seem just.

The executor may obtain leave to issue execution on an *ex parte* application. (*Mercer* v. *Lawrence*, 26 W. R. 506.)

Order enforced as judgment.

20. Every order of the Court or a Judge, whether in an action, cause, or matter, may be enforced in the same manner as a judgment to the same effect.

An order dismissing an action with costs for want of prosecution cannot be enforced by attachment, as if it were a judgment. (*Cremetti* v. *Crom*, 4 Q. B. D. 225.)

Persons not parties.

21. In cases other than those mentioned in Rule 18 any person not being a party in an action, who obtains any order or in whose favour any order is made, shall be entitled to enforce obedience to such order by the same process as if he were a party to the action; and any person not being a party in an action against whom obedience to any judgment or order may be enforced, shall be liable to the same process for enforcing obedience to such judgment or order as if he were a party to the action.

Audita querela.

22. No proceeding by audita querela shall hereafter be used; but any party against whom judgment has been given may apply to the Court or a Judge for a stay of execution or other relief against such judgment, upon the ground of facts which have arisen too late to be pleaded; and the Court or Judge may give such relief and upon such terms as may be just.

Saving clause.

23. Nothing in any of the rules of this Order shall take away or curtail any right heretofore existing to enforce or give effect to any judgment or order in any manner or against any person or property whatsoever.

Issue of writs.

24. Nothing in this Order shall affect the order in which writs of execution may be issued.

ORDER XLIII.

Writs of Fieri Facias and Elegit.

Former procedure unaffected.

1. Writs of fieri facias and of elegit shall have the same force and effect as the like writs have heretofore had, and shall be executed in the same manner in which the like writs have heretofore been executed.

By 27 & 28 Vict. c. 112, sec. 1, no judgment is to affect land, until it has been actually delivered in execution. As to what amounts to delivery in execution of mortgage property, see *Backhouse* v. *Siddle*, 38 L. T. 487.

Writs in aid.

2. Writs of venditioni exponas, distringas nuper vice comitem, fieri facias de bonis ecclesiasticis, sequestrari facias de bonis ecclesiasticis, and all other writs in aid of a writ of fieri facias or of elegit, may be issued and executed in the same cases and in the same manner as heretofore.

ORDER XLIV.

Attachment.

Effect of writ.

1. A writ of attachment shall have the same effect as a writ of attachment issued out of the Court of Chancery has heretofore had.

Not without leave.

2. No writ of attachment shall be issued without the leave of the Court or a Judge, to be applied for on notice to the party against whom the attachment is to be issued.

According to the old practice, a rule for an attachment against a sheriff for not returning a writ of fi. fa. was absolute in the first instance; but the practice has now been superseded. (*Jupp* v. *Cooper*, 5 C. P. D. 26.)

The costs of an application for attachment are in the discretion of the Court. (*Abud* v. *Riches*, 2 Ch. D. 528.)

The notice may be served on the solicitor of the party, or at his residence. (*Browning* v. *Sabin*, 5 Ch. D. 511; *Re a Solicitor*, 14 Ch. D. 152.) An order made upon a solicitor personally, at his place of business (*Tilney* v. *Stansfeld*, W. N. 1880, 77); his residence could not be ascertained.

An attachment will only be issued to enforce the payment of a sum of money in cases within the exceptions to the Debtors Act,

1869, sec. 4. (*The Earl of Lewes* v. *Barnett*, 6 Ch. D. 252; *The Phosphate Sewage Co.* v. *Hartmont*, 25 W. R. 743.) Nor will a defendant, who has cleared his contempt, be detained in prison for the non-payment of the costs. (*Jackson* v. *Mawby*, 1 Ch. D. 86.)

The provisions as to substituted service do not apply to an application for an attachment. (W. N. 1876, 105.)

ORDER XLV.

Attachment of Debts.

Examination of debtor.

1. Where a judgment is for the recovery by or payment to any person of money, the party entitled to enforce it may apply to the Court or a Judge for an order that the judgment debtor be orally examined as to whether any and what debts are owing to him, before an officer of the Court, or such other person as the Court or Judge shall appoint; and the Court or Judge may make an order for the examination of such judgment debtor, and for the production of any books or documents.

Before a judgment debtor can be attached, it must be shown that he has been tendered conduct money, that there is good reason for not examining him where he resides, and that there is no other means of ascertaining what debts are owing to him. (*The Protector Co.* v. *Whitlam*, 36 L. T. 467.)

Under a similar section in the C. L. P. Act, 1854, it was held that there was no power to order the examination of an officer of a corporation, or the directors, for the purpose of finding out what debts were due to it. (*Dickson* v. *Neath Railway Co.*, L. R., 4 Ex. 87.) Under the same section service on the wife was held insufficient to ground an order for attachment. (*Mason* v. *Muggeridge*, 18 C. B. 642.) It would appear that service on the solicitor of the party will be sufficient (*Browning* v. *Sabin*, 5 Ch. D. 511), or at his residence. (*Re a Solicitor*, 14 Ch. D. 152.)

Garnishee order.

2. The Court or a Judge may, upon the *ex parte* application of such judgment creditor, either before or after such oral examination, and upon affidavit by himself or his solicitor stating that judgment has been recovered, and that it is still unsatisfied, and to what amount, and that any other person is indebted to the judgment debtor, and is within the jurisdiction, order that all debts owing or accruing from such third person (hereinafter called the garnishee) to the judgment debtor shall be attached to answer the judgment debt;

and by the same or any subsequent order it may be ordered that the garnishee shall appear before the Court or a Judge or an officer of the Court, as such Court or Judge shall appoint, to show cause why he should not pay the judgment creditor the debt due from him to the judgment debtor, or so much thereof as may be sufficient to satisfy the judgment debt.

Owing or accruing.

The question as to what are debts "owing or accruing," is sometimes one of considerable nicety. Thus, the unearned salary of a medical officer of health was held unattachable. (*Hall* v. *Prichett*, 3 Q. B. D. 215.) Similarly, a superannuation allowance. (*Innes* v. *East India Co.*, 17 C. B. 351.) Neither was there held to be a debt "owing or accruing" where there was merely a notice to treat under the Lands Clauses Act, 1845. It might turn out that the party to whom the notice had been given had no interest whatever in the premises with respect to which he would be entitled to compensation. (*Richardson* v. *Elmit*, 2 C. P. D. 9.) But where it has been agreed to pay a debt by instalments, the order for attachment may include the instalments as and when they become due. (*Tapp* v. *Jones*, L. R. 10 Q. B. 791.) If, however, the judgment creditor have afterwards sued in a County Court on the same judgment, and have obtained an order in that Court for the payment of the debt by instalments, it does not appear that the Superior Court will aid the process of the inferior. (*Jones* v. *Jenner*, 25 L. J. Ex. 319.) Rent is the subject of an attachment (*Mitchell* v. *Lee*, L. R. 2 Q. B. 259); as is a debt which has been

Bond.

secured by a bond payable at a future time. (*Sparks* v. *Younge*, 8 Ir. C. L. Rep. 261 Q. B.) But not a bond, conditioned in a penal sum, as a security for unliquidated damages, payable on

Verdict.

a contingency. (*Johnson* v. *Diamond*. 11 Ex. 73.) A verdict cannot be attached till judgment has been signed (*Dresser* v. *Johns*, 28 L. J. C. P. 281); or money paid into Court. (*Jones* v.

Cheque.

Brown, 29 L. T. 79.) Where a garnishee order was made after the giving and before the presentation of a cheque, it was held that upon the refusal of the bankers to cash the cheque, the garnishee order became effectual to bind the debt in the hands of the garnishee. (*Cohen* v. *Hale*, 3 Q. B. D. 371.)

Officer of the Court.

Money in the hands of an officer who acts under the directions of the Court, may not be attached, as, for instance, its receiver (*Russell* v. *East Anglian Ry. Co.*, 3 M. & G. 104; *Ames* v. *Birkenhead Docks*, 20 Beav. 332; *Ex parte Hunter*, *Re Greensill*, L. R., 8 C. P. 24); where official liquidator (*Dawson* v. *Malley*, Ir. Rep., 1 C. L. 207); an assignee in bankruptcy (*Boyse* v. *Simpson*, 8 Ir. C. L. Rep. (N.S.) 523; *Re Greensill* L. R. 8 C. P. 24); official manager of a company (*Ex parte Marshall Turner*, 2 D. F. & J. 354; *Ex parte Hawkins*, L. R. 3 Ch. 787.) Money paid into Court in hands of Registrar. (*Dolphin* v. *Layton*, 4 C. P. D. 130; and see *Jones* v. *Brown*, 29 L. T. (O. S.) 79.)

Administration.

After a suit for administration has been instituted in the Chancery Division, and the personal estate of the testator has been taken possession of by the Court, the executors have been discharged from all liabilities to pay the testator's debts, no garnishee

order can be obtained to bind the funds in the hands of the Court. (*Stevens* v. *Phelips*, L. R. 10 Ch. 417.)

A creditor who has obtained a judgment against an executor, before the date of a decree for administration, will be allowed to attach a debt due to the estate in the hands of a third person. (*Fowler* v. *Roberts*, 2 Giff. 226; *Burton* v. *Roberts*, 6 H. & N. 93.)

If a garnishee order can be obtained against executors in respect of a debt due from their testator, it should show on its face that it is directed to them as executors. (*Stevens* v. *Phelips*, L. R. 10 Ch. 417.)

Contrary to public policy.

The half-pay of a military or naval officer is protected, on grounds of public policy, but not a pension received solely in respect of past services. (*Dent* v. *Dent*, L. R., 1 P. & D. 366; and see also on this subject *Willcock* v. *Terrell*, 3 Ex. D. 323; *Sansom* v. *Sansom*, 4 P. D. 69.) A debt will not be allowed to be attached, where the effect would be to give one creditor priority to the rest, contrary to an agreement (sanctioned by an Act of Parliament) that all the creditors should be paid *pari passu*. (*Kennett* v. *The Westminster Commissioners*, 11 Ex. 349.)

Money due to a railway company, for the purpose of distribution among its stock-holders, by an agreement sanctioned by an Act of Parliament, may be attached by a judgment creditor of the company. (*Bouch* v. *The Sevenoaks Ry. Co.*, 4 Ex. D. 133.)

The judgment debt.

Before the Judicature Acts there was no procedure in the Chancery Courts analogous to an attachment under the C. L. P. Act. (*Horsley* v. *Cox*, L. R. 4 Ch. 92. *Re Price*, L. R. 4 C. P. 155.)

The language of these sections only applies to a judgment obtained in an action, and consequently are inapplicable to an order to pay money which is to be taken to have the effect of a judgment. (*Best* v. *Pembroke*, L. R. 8 Q. B. 363; *Sunderland Board* v. *Frankland*, *Ibid.* 18; *Cremetti* v. *Crom*, 4 Q. B. D. 225.)

Where a debt has been *bonâ fide* assigned, there is nothing for the attachment to operate on. (*Hirsell* v. *Coates*, 18 C. B. 757; *Wise* v. *Birkenshaw*, 29 L. J. 241.) To entitle a garnishee to dispute his liability, he must show some grounds for being allowed to do so. (*Newman* v. *Rooke*, 4 C. B. (N. S.) 434.)

Solicitor.

Where a solicitor has taken out a summons for a charging order, under 23 & 24 Vict., c. 127, sec. 28, he is entitled to priority to a judgment creditor, who subsequently obtains a garnishee order. (*Birchall* v. *Pugin*, 10 C. P. 397.) So does his lien for the costs of a particular action if he have given notice to the garnishee (*Sympson* v. *Prothero*, 26 L. J. Ch. 671); and if the judgment creditor have notice he may be obliged to refund (*Eisdell* v. *Coningham*, 28 L. J. Ex. 213); but his general lien has no such precedence (*Hough* v. *Edwards*, 26 L. J. Ex. 54).

Foreign attachment.

A foreign attachment will not affect any moneys in the hands of the garnishee, unless the debtor could have maintained an action to recover them at the time of the attachment, or at any time between the issuing of the attachment, and the time when the pleas were entered by the garnishee (*Webster* v. *Webster*, 31 L. J. 655), and creates no priority in administration (*Redhead* v. *Wilton*, 30 L. J. Ch. 577). The existence of an attachment does not prevent the operation of a garnishee order out of the superior Court. (*Richter* v. *Laxton*, 48 L. J. 184.)

A creditor who has served a writ of attachment out of the Mayor's Court is not a secured creditor within sec. 12 of the Bankruptcy Act. (*Levy* v. *Lovell*, 28 W. R. 602.)

By sec. 1 of 33 & 34 Vict. c. 30, the wages of any servant, labourer, or workman shall not be liable to attachment.

By sec. 233 of 17 & 18 Vict. c. 104, no wages due or accruing to any seaman or apprentice shall be subject to attachment or arrestment from any Court.

Debts bound from service of order.

3. Service of an order that debts due or accruing to the judgment debtor shall be attached, or notice thereof to the garnishee, in such manner as the Court or Judge shall direct, shall bind such debts in his hands.

A judgment creditor, who has obtained and served a garnishee order *nisi*, before the filing of a liquidation or winding-up petition, is a secured creditor within the meaning of sec. 12 of the Bankruptcy Act, 1869, even though the debt does not become actually payable until after the commencement of the liquidation. (*Ex parte Jocelyne, Re Watt*, 8 Ch. D. 327; *In re Stanhope Colliery Co.*, 11 Ch. D. 160.)

Execution against garnishee.

4. If the garnishee does not forthwith pay into Court the amount due from him to the judgment debtor, or an amount equal to the judgment debt, and does not dispute the debt due or claimed to be due from him to the judgment debtor, or if he does not appear upon summons, then the Court or Judge may order execution to issue, and it may issue accordingly, without any previous writ or process, to levy the amount due from such garnishee, or so much thereof as may be sufficient to satisfy the judgment debt.

Under a corresponding section of the C. L. P. Act, 1851, sec. 63, it was held that a garnishee had no right to set off a debt due to him by the judgment creditor. (*Sampson* v. *Seaton Beer Railway Co.*, L. R. 10 Q. B. 28.) "There is no place," says Lush, J., in his judgment, "for the discussion of cross-claims." But it is to be observed, that the dealing with claims in which third parties were involved was at that time foreign to the practice of the Courts; and it would appear that Rule 5, *post*, contains sufficiently ample provisions to obviate the difficulty felt in the above-mentioned case.

Liability disputed.

5. If the garnishee disputes his liability, the Court or Judge, instead of making an order that execution shall issue, may order that any issue or question necessary for determining his liability be tried or determined in any manner in which any issue or question in an action may be tried or determined.

A garnishee, in order to be allowed to dispute his liability, must show some grounds. (*Newman* v. *Rooke*, 4 C. B. (N. S.) 434.)

Charge of third party.

6. Whenever in proceedings to obtain an attachment of debts it is suggested by the garnishee that the debt sought to be attached belongs to some third person, or that any third person has a lien or charge upon it, the Court or Judge may order such third person to appear, and state the nature and particulars of his claim upon such debt.

Third-party claim may be barred.

7. After hearing the allegations of such third person under such order, and of any other person whom by the same or any subsequent order the Court or Judge may order to appear, or in case of such third person not appearing when ordered, the Court or Judge may order execution to issue to levy the amount due from such garnishee, or any issue or question to be tried or determined according to the preceding rules of this Order, and may bar the claim of such third person, or make such other order as such Court or the Judge shall think fit, upon such terms, in all cases, with respect to the lien or charge (if any) of such third person, and to costs, as the Court or Judge shall think just and reasonable.

If the parties agree to the Judge deciding the matter in a summary way, his decision is final. (*Eade* v. *Winser*, 47 L. J. 584.)

Discharge of garnishee.

8. Payment made by or execution levied upon the garnishee under any such proceeding as aforesaid shall be a valid discharge to him as against the judgment debtor, to the amount paid or levied, although such proceeding may be set aside, or the judgment reversed.

In *Lockwood* v. *Nash*, 18 C. B. 536, a judgment creditor obtained an order *nisi*, which he afterwards abandoned. The judgment debtor then sued for the original debt, and the matter underwent considerable discussion; but was finally decided on a technical point.

In order to protect the garnishee, there should be an order for payment. (*Turner* v. *Jones*, 1 H. & C. 878.)

Attachment book.

9. There shall be kept by the proper officer a debt attachment book, and in such book entries shall be made of the attachment and proceedings thereon, with names, dates, and statements of the amount recovered, and otherwise; and copies of any entries

made therein may be taken by any person upon application to the proper officer.

Costs.

10. The costs of any application for an attachment of debts and of any proceedings arising from or incidental to such application, shall be in the discretion of the Court or a Judge.

ORDER XLVI.

Charging of Stock or Shares and Distringas.

Order, how obtained.

1. An order charging stock or shares may be made by any Divisional Court or by any Judge, and the proceedings for obtaining such order shall be such as are directed, and the effect shall be such as is provided by 1 & 2 Vict. c. 110, ss. 14 and 15, and 3 & 4 Vict. c. 82, s. 1.

A stop order may be obtained in the Chancery Division on a fund standing to the credit of a cause in that Division, by a person who has obtained judgment in one of the Courts at Westminster. (*Hopewell* v. *Barnes*, 1 Ch. D. 630.) Upon a judgment decreeing payment in three months, plaintiff is entitled at once to a charging order. (*Bagnall* v. *Carlton*, 6 Ch. D. 130.)

As to stock standing in the names of executors in the Bank of England, upon which a charging order has been obtained, see *Fowler* v. *Churchill*, 11 M & W. 323.

A charging order cannot be given for "costs, charges, and expenses," until they have been taxed. (*Widgery* v. *Tepper*, 6 Ch. D. 364.)

If the order *nisi* has been made after the judgment debtor's death, it cannot be made absolute. (*Finney* v. *Hind*, 4 Q. B. D. 102.)

The date from which a charging order operates when made absolute is from the making of the order *nisi*. (*Haly* v. *Barry*, L. R. 3 Ch. 452.) See further, Morgan's "Chancery Acts and Orders," 5th ed. 582.

1 & 2 Vict. c. 110, ss. 14 and 15.

Stock and shares in public funds and public companies belonging to the debtor, and standing in his own name, to be charged by order of a Judge.

XIV. And be it enacted, that if any person against whom any judgment shall have been entered up in any of Her Majesty's Superior Courts at *Westminster* shall have any Government stock, funds, or annuities, or any stock or shares of or in any public company in *England* (whether incorporated or not), standing in his name in his own right, or in the name of any person in trust for him, it shall be lawful for a Judge of one of the Superior Courts, on the application of any judgment creditor, to order that such stock, funds, annuities, or shares, or such of them or such part thereof respectively as he shall think fit, shall stand charged with the payment of the amount for which judgment shall have been so recovered, and interest thereon, and such Order shall entitle the judgment creditor to all such re-

medies as he would have been entitled to if such charge had been made in his favour by the judgment debtor; provided that no proceedings shall be taken to have the benefit of such charge until after the expiration of six calendar months from the date of such Order.

Order of Judge to be made in the first instance ex parte, and on notice to the bank or company to operate as a distringas.

XV. And in order to prevent any person against whom judgment shall have been obtained from transferring, receiving, or disposing of any stock, funds, annuities, or shares hereby authorised to be charged for the benefit of the judgment creditor under an Order of a Judge, be it further enacted, that every Order of a Judge charging any Government stock, funds, or annuities, or any stock or shares in any public company, under this Act, shall be made in the first instance *ex parte*, and without any notice to the judgment debtor, and shall be an Order to show cause only; and such Order, if any Government stock, funds, or annuities standing in the name of the judgment debtor in his own right, or in the name of any person in trust for him, is to be affected by such Order, shall restrain the governor and company of the Bank of England from permitting a transfer of such stock in the meantime and until such Order shall be made absolute or discharged; and if any stock or shares of or in any public company, standing in the name of the judgment debtor in his own right, or in the name of any person in trust for him, is or are to be affected by any such Order, shall in like manner restrain such public company from permitting a transfer thereof; and that if, after notice of such Order to the person or persons to be restrained thereby, or in case of corporations to any authorised agent of such corporation, and before the same Order shall be discharged or made absolute, such corporation or person or persons shall permit any such transfer to be made, then and in such case the corporation or person or persons so permitting such transfer shall be liable to the judgment creditor for the value or amount of the property so charged and so transferred, or such part thereof as may be sufficient to satisfy his judgment; and that no disposition of the judgment debtor in the meantime shall be valid or effectual as against the judgment creditor; and further, that, unless the judgment debtor shall within a time to be mentioned in such Order show to a Judge of one of the said Superior Courts sufficient cause to the contrary, the said Order shall, after proof of notice thereof to the judgment debtor, his attorney or agent, be made absolute: provided that any such Judge shall, upon the application of the judgment debtor, or any person interested, have full power to discharge or vary such Order, and to award such costs upon such application as he may think fit.

3 & 4 Vict. c. 82, s. 1.

1 & 2 Vict. c. 110.

Whereas by an Act passed in the second year of the reign of her Majesty, intituled, "An Act for abolishing arrest on Mesne Process in Civil Actions, except in certain cases; for extending the remedies of creditors against the property of debtors; and for amending the laws for the relief of insolvent debtors in England," it was amongst other things enacted, that if any person against whom any judgment should have been entered up in any of her Majesty's Superior Courts at Westminster should have any Government stock, funds or annuities, or any stock or shares of or in any public company in England (whether incorporated or not), standing in his name in his own right, or in the name of any person in trust for him, it should be lawful for a Judge of one of

the Superior Courts, on the application of any judgment creditor, to order that such stock, funds, annuities, or shares, or such of them, or such part thereof respectively, as he should think fit, should stand charged with the payment of the amount for which judgment should have been so recovered, and interest thereon, and such order should entitle the judgment creditor to all such remedies as he would have been entitled to if such charge had been made in his favour by the judgment debtor; provided that no proceedings should be taken to have the benefit of such charge until after the expiration of six calendar months from the date of such order: And whereas doubts have been entertained whether the said provisions extend to the cases hereinafter mentioned: Now, therefore, be it declared and enacted by the Queen's most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, that the aforesaid provisions of the said Act shall be deemed and taken to extend to the interest of any judgment debtor, whether in possession, remainder, or reversion, and whether vested or contingent, as well as in any such stocks, funds, annuities, or shares as aforesaid, as also in the dividends, interest, or annual produce of any such stock, funds, annuities, or shares; and whenever any such judgment debtor shall have any estate, right, title, or interest, vested or contingent, in possession, remainder, or reversion, in, to, or out of any such stocks, funds, annuities, or shares as aforesaid, which now are or shall hereafter be standing in the name of the Accountant General of the Court of Chancery, or the Accountant General of the Court of Exchequer, or in, to, or out of the dividends, interest, or annual produce thereof, it shall be lawful for such Judge to make any order as to such stock, funds, annuities, or shares or the interest, dividends, or annual produce thereof, in the same way as if the same had been standing in the name of a trustee of such judgment debtor: Provided always, that no order of any judge as to any stock, funds, annuities, or shares standing in the name of the Accountant General of the Court of Chancery, or the Accountant General of the Court of Exchequer, or as to the interest, dividends, or annual produce thereof, shall prevent the Governor and Company of the Bank of England, or any public Company, from permitting any transfer of such stocks, funds, annuities, or shares, or payment of the interest, dividends, or annual produce thereof, in such manner as the Court of Chancery or the Court of Exchequer respectively may direct, or shall have any greater effect than if such debtor had charged such stock, funds, annuities, or shares, or the interest, dividends, or annual produce thereof, in favour of the judgment creditor, with the amount of the sum to be mentioned in any such order.

Provisions of recited Act as to property of judgment debtors defined and extended.

Writ of distringas not to issue. R.S.C. April, 1880.

2*a*. Order XLVI., Rule 2, is hereby annulled, and no writ of distringas shall hereafter be issued under the Act 5 Vict. c. 5, s. 5.

Meaning of "company" and "stock." R.S.C. April, 1880.

3. In the following rules of this Order the expression "Company" includes the Governor and Company of the Bank of England and any other public company, whether incorporated or not, to

which 5 Vict. c. 5, s. 5, applies, and the expression "stock" includes shares, securities, and money.

Filing and service of affidavit and notice as to stock. R.S.C. April, 1880.

4. Any person claiming to be interested in any stock standing in the books of a Company may, on making an affidavit in or to the effect of the Form B. 28 in the schedule hereto, and on filing the same in the Central Office with a notice in or to the effect of the Form B. 23 in the same schedule annexed thereto, and on procuring an office copy of the affidavit and a duplicate of the filed notice authenticated by the seal of the Central Office, serve the office copy and duplicate notice on the Company.

Affidavit to state address of claimant. R.S.C. April, 1880.

5. There shall be appended to the affidavit a note stating the person on whose behalf it is filed, and to what address notices (if any) for that person are to be sent. All such notices shall be deemed to have been duly sent if sent through the post by a prepaid letter directed to that person at the address so stated, or at any such substituted address as hereinafter mentioned, whether the person to whom the notice is sent is living or not.

Alteration of address. R.S.C. April, 1880.

6. The address so stated may, from time to time, be altered by the person by or on whose behalf the affidavit is filed, but all notices sent by post before the alteration to the address originally given or for the time being substituted therefor shall not be affected by any subsequent alteration. Any such alteration of address may be made by service of a memorandum thereof on the Company in the manner required for service of a notice under this order.

Service of affidavit and filed notice to have same effect as writ of distringas. R.S.C. April, 1880.

7. The service of the office copy of the affidavit and of the duplicate of the filed notice shall for the period of five years from the day of service, but not longer (unless the notice is renewed as after mentioned), have the same force and effect as if these rules had not been made and a writ of distringas in respect of the stock had been duly issued under the Act 5 Vict. c. 5, s. 5.

Renewal of notice. R.S.C. April, 1880.

8. The original notice may be kept on foot from time to time by a notice of renewal signed by the person by whom or on whose behalf the original

notice was given, and served on the Company, provided the notice of renewal, if only one is given, is served before the expiration of five years from the day on which the original notice was served, or, if more than one is given, then before the expiration of five years from the day on which the last previous notice of renewal was served. Each such notice of renewal shall have the effect of continuing and keeping on foot the original notice for the period of five years from the day on which the first notice of renewal or the last previous notice of renewal (as the case may be) was served.

Withdrawal or discharge of notice. R.S.C. April, 1880.

9. A notice filed under this Order may at any time be withdrawn by the person by whom or on whose behalf it was given on a written request signed by him, or its operation may be made to cease by an order to be obtained by motion on notice or by petition duly served by any other person claiming to be interested in the stock sought to be affected by the notice.

Effect of request for transfer of stock or payment of dividend. R.S.C. April, 1880.

10. If, whilst a notice filed under this Order continues in force, the Company on whom it is served receive from the person in whose name the stock specified in the notice is standing, or from some person acting on his behalf or representing him, a request to permit the stock to be transferred or to pay the dividends thereon, the Company shall not by force or in consequence of the service or of any renewal of the notice, be authorised, without the order of the Court, to refuse to permit the transfer to be made or to withhold the payment of the dividends for more than eight days after the date of the request.

Amendment of description of stock. R. S. C. April, 1880.

11. If the person who files a notice under this Order desires to correct the description of the stock referred to in the filed notice he may file an amended notice and serve on the Company a duplicate thereof sealed with the seal of the central office, and in that case the service of the notice shall be deemed to have been made on the day on which the amended duplicate is so served.

ORDER XLVII.

Writ of Sequestration.

How obtained.

Where any person is by any judgment directed to pay money into Court or to do any other act in a limited time, and after due service of such judgment refuses or neglects to obey the same according to the exigency thereof, the person prosecuting such judgment shall at the expiration of the time limited for the performance thereof, be entitled without obtaining any order for that purpose, to issue a writ of sequestration against the estate and effects of such disobedient person. Such writ of sequestration shall have the same effect as a writ of sequestration in Chancery has heretofore had, and the proceeds of such sequestration may be dealt with in the same manner as the proceeds of writs of sequestration have heretofore been dealt with by the Court of Chancery.

Effect of.

It is unnecessary to obtain an order for leave to issue a writ of sequestration, for non-compliance with an order of Court. (*Sprunt* v. *Pugh*, 7 Ch. D. 567.)

Sequestrators were appointed and empowered to receive the pension of a County Court Judge. An order was made restraining the debtor from receiving by himself, or through his bankers, the moneys payable in respect to the same. (*Willcock* v. *Terrell*, 3 Ex. D. 323.)

For costs and alimony, see *Sansom* v. *Sansom*, 4 P. D. 25.

As to enforcing a simple judgment for a debt, see Order XLII., Rule 2, *note*.

No subpœna or, without leave, sequestration for costs.

2. No subpœna for the payment of costs, and, unless by leave of the Court or a Judge, no sequestration to enforce such payment, shall be issued.

R. S. C. April, 1880.

ORDER XLVIII.

Writ of Possession.

How enforced.

1. A judgment that a party do recover possession of any land may be enforced by writ of possession in manner heretofore used in actions of ejectment in the Superior Courts of Common Law.

The writ of possession has now superseded the writ of assistance, formerly in use in the Court of Chancery. (*Hall* v. *Hall*, 47 L. J. Ch. 680. See Day's C. L. P. Act, 4th ed., p. 191.)

How obtained.

2. Where by any judgment any person therein named is directed to deliver up possession of any lands to some other person, the person prosecuting

such judgment shall, without any order for that purpose, be entitled to sue out a writ of possession on filing an affidavit showing due service of such judgment and that the same has not been obeyed.

For form of writ, see App. F., No. 7.

ORDER XLIX.

Writ of Delivery.

Delivery of chattels.

A writ for delivery of any property other than land or money may be issued and enforced in the manner heretofore in use in actions of detinue in the Superior Courts of Common Law.

The form of the writ is given in Appendix F. No. 8. Sect. 78 of the C. L. P. Act, 1854, was that which regulated the procedure previous to the Judicature Acts; by it a plaintiff is entitled to have his costs, either by the same or a separate writ of execution.

ORDER L.

Change of Parties by Death, &c.

Abatement.

1. An action shall not become abated by reason of the marriage, death, or bankruptcy of any of the parties, if the cause of action survive or continue, and shall not become defective by the assignment, creation, or devolution of any estate or title *pendente lite.*

When the cause of action survives to the trustee in Bankruptcy, a notice of motion to dismiss for want of prosecution must be served on him. (*Wright* v. *Swindon Ry. Co.*, 4 Ch. D. 164.)

Where the action came on for trial and there was no evidence that any notice of it had been served on the trustee in his absence, it was ordered to be struck out of the list. (*Eldridge* v. *Burgess*, 7 Ch. D. 411.)

If one of two trustees be willing to continue the action at his own risk, he may have an order as of course, and make his co-trustee a defendant. (*Jackson* v. *North-Eastern Ry. Co.*, 5 Ch. D. 844.)

Where five defendants were jointly and severally liable, two of whom became bankrupt, Fry, J., offered to allow the trial to stand, that the other three might serve notice on the trustees of the bankrupts if they wished to do so; as they declined, the trial was ordered to proceed. (*Lloyd* v. *Dimmock*, 7 Ch. D. 398.)

Where a petitioner had died after an order directing inquiries, it was ordered that the petition should be carried on by the executors. (*Re Atkin's Estate*, 1 Ch. D. 82.)

In *Wingrove* v. *Thompson*, 11 Ch. D. 419, the Court appointed a person to represent the estate of a deceased plaintiff, who died insolvent and intestate, so that defendant might have somebody

against whom to move, to have the action dismissed for want of prosecution. When the injury has been to the estate of the deceased the action survives to his personal representative. (*Twycross* v. *Grant*, 4 C. P. D. 40.)

Substitution of representative.

2. In case of the marriage, death, or bankruptcy, or devolution of estate by operation of law, of any party to an action, the Court or a Judge may, if it be deemed necessary for the complete settlement of all the questions involved in the action, order that the husband, personal representative, trustee, or other successor in interest, if any, of such party be made a party to the action, or be served with notice thereof in such manner and form as hereinafter prescribed, and on such terms as the Court or Judge shall think just, and shall make such order for the disposal of the action as may be just.

This order stands in lieu of the old order or writ of revivor, and is so spoken of in *Chorlton* v. *Dickie*, 13 Ch. D. 160.

Devolution of interest.

3. In case of an assignment, creation, or devolution of any estate or title *pendente lite*, the action may be continued by or against the person to or upon whom such estate or title has come or devolved.

In *Re Paris Rink Co.*, 5 Ch. D. 959, it was held, that a shareholder of a company would not be allowed to purchase the right to proceed with a winding-up petition.

Regulations as to adding parties.

4. Where by reason of marriage, death, or bankruptcy, or any other event occurring after the commencement of an action, and causing a change or transmission of interest or liability, or by reason of any person interested coming into existence after the commencement of the action, it becomes necessary or desirable that any person not already a party to the action should be made a party thereto, or that any person already a party thereto should be made a party thereto in another capacity, in order that the proceedings in the action shall be carried on between the continuing parties to the action, and such new party or parties, may be obtained *ex parte* on application to the Court or a Judge, upon an allegation of such change, or transmission of interest or liability, or of such person interested having come into existence.

Where new trustees had been appointed in a decree for administration, Jessel, M. R., said that an order to revive the suit against them could have been obtained at the order of course office, and consequently refused an application made in Court. (*Roffey* v. *Miller*, W. N., 1875, 225.) In cases of some nicety the application may be made in Court. (*Haldane* v. *Eckford*, W. N., 1879, 80.)

Service of order to add parties.

5. An order so obtained shall, unless the Court or Judge shall otherwise direct, be served upon the continuing party or parties to the action, or their solicitors, and also upon each such new party, unless the person making the application be himself the only new party, and the order shall from the time of such service, subject nevertheless to the next two following rules, be binding on the persons served therewith, and every person served therewith who is not already a party to the action shall be bound to enter an appearance thereto within the same time and in the manner as if he had been served with a writ of summons.

If the party served does not appear, judgment will be given against him. (*Chorlton* v. *Dickie*, Order XIX., Rule 6, and XXXVI., Rule 18, *ante*.

Application to vary order.

6. Where any person who is under no disability or under no disability other than coverture, or being under any disability other than coverture, but having a guardian *ad litem* in the action, shall be served with such order, such person may apply to the Court or a Judge to discharge or vary such order at any time within twelve days from the service thereof.

By person under disability.

7. Where any person being under any disability other than coverture, and not having had a guardian *ad litem* appointed in the action, is served with any such order, such person may apply to the Court or a Judge to discharge or vary such order at any time within twelve days from the appointment of a guardian or guardians *ad litem* for such party, and until such period of twelve days shall have expired such order shall have no force or effect as against such last-mentioned person.

ORDER LI.

Transfers and Consolidation.

By Lord Chancellor.

1. Any action or actions may be transferred from one division to another of the High Court or from one Judge to another of the Chancery Division by an order of the Lord Chancellor, provided that no transfer shall be made from or to any division without the consent of the President of the Division.

The Lord Chancellor has exclusive jurisdiction to make this order. (*Re Hutley*, 1 Ch. D. 11 ; *Re Boyd's Trusts*, *Ibid.* 12.) In a memoradum issued Nov. 10, 1875 (1 Ch. D. 41), James, L. J., stated, that the Lord Chancellor would direct the transfer of any action, on a written application to his secretary, accompanied by the written consent of all parties ; but where all parties did not consent, the application must be made to the Lord Chancellor in Court.

R. S. C. June, 1877.

1*a*. In the Chancery Division a transfer of a cause from one Judge to another may by the same or a separate order be ordered to be made or to be deemed to have been made for the purpose only of trial or of hearing, and in such case the original and any further hearing shall take place before the judge to whom the cause shall be so transferred ; but all other proceedings therein, whether before or after the hearing or trial of the cause, shall be taken and prosecuted in the same manner as if such cause had not been transferred from the Judge to whom it was assigned at the time of transfer, and as if such Judge had made the decree or judgment, if any, made therein, unless the Judge to whom the cause is transferred shall direct that any further proceedings therein, before or after the hearing or trial thereof, shall be taken and prosecuted before himself or before an official or special referee.

By an order of the Lord Chancellor dated the 19th June, 1877, "Each of the several causes which have been or shall be transferred to Mr. Justice Fry shall, until further order, be deemed to have been transferred to him for the purpose only of trial or of hearing, and no cause or matter shall until further order be assigned to Mr. Justice Fry by plaintiff or petitioner. See also Order V., Rule 4*a*, *ante*.

Under this rule when an interlocutory application relates to the merits of the case, the Judge to whom the action has been transferred is the proper person to deal with the application. (*Robinson* v. *Chadwick*, 26 W. R. 421 ; *Lloyd* v. *Jones*, 7 Ch. D. 890.)

By Court,

2. Any action may, at any stage, be transferred from one division to another by an order made by the Court or any Judge of the Division to which the action is assigned: Provided that no such transfer shall be made without the consent of the President of the Division to which the action is proposed to be transferred.

Motion for transfer under this rule should be on notice. (*Humphreys* v. *Edwards*, 45 L. J. Ch. 112.) The transfer is not effectual until the consent of the President of the Division to which it is made is obtained. (*Ibid.*) In *Storey* v. *Waddle*, 4 Q. B. D. 289, James, L. J., said, "I doubt very much if we have power to make the transfer without the consent of the Presidents of both Divisions from and to which the transfer is proposed to be made,"

and he declined to interfere with the discretion of the Q. B. Div. Court refusing a transfer, Bramwell and Brett, L. J. J., concurring.

In the Common Law Divisions, a Judge of one Division sitting in Chambers acts for all. (*Hillman* v. *Mayhew*, 1 Ex. D. 132.)

This rule relates only to the transfer of an action from one Division to another, and does not authorise a transfer from a Judge of one Division to another Judge of the same Division. Hence in urgent cases, if a Judge of the Chancery Division be ill, it is necessary to proceed under sec. 51 Jud. Act, 1873. (*Chapman* v. *Real Property Trust Co.*, 7 Ch. D. 732.)

Where the action is one which can be more conveniently disposed of in the Chancery Division, or for which that Division only has the requisite machinery, it ought to be transferred. (*Hillman* v. *Mayhew*, 1 Ex. D. 132; *Holloway* v. *York*, 2 Ex. D. 333.) But in *Storey* v. *Waddle*, 4 Q. B. D. 289, where defendant by his counterclaim asked for the rectification of a deed and specific performance of an agreement, the Queen's Bench Div. Court having refused an order to transfer the action, James, L. J., said he thought the Court of Appeal had no jurisdiction to make the order, and declined to interfere with the discretion of the Q. B. Div.

Where an action was pending, both in the Chancery Division and the Exchequer Division, arising out of the same circumstances, the Exchequer Division ordered the one pending before it to be transferred for the purpose of consolidation. (*Holmes* v. *Hervey*, 25 W. R. 80.)

Shipping cases will be transferred to the Admiralty Division if they be of such nature as that Division is peculiarly fitted to deal with. (*Humphreys* v. *Edwards*, 45 L. J. Ch. 112; *The General Steam Navigation Co.* v. *Edinburgh Shipping Co.*, W. N. 1876, 56.)

Though the Common Law Divisions cannot reform or set aside a deed with regard to its effect in the future, they may, for the purpose of determining an action, treat it as set aside; it is unnecessary, therefore, to have it transferred for that limited purpose. (*Mostyn* v. *West Mostyn Coal Co.*, 1 C. P. D. 150.)

In *Clements* v. *Norris*, W. N. 1878, 4, Hall, V. C., stated that an opinion existed amongst the Judges generally, that where issues of fact were to be tried before a Judge of another Division and a jury, it would be a better and more convenient course to transfer the action to that Division in which the issues would be tried, although it was properly one of the class which had been appropriated to the Chancery Division.

R. S. C. June 1876.

2*a*. When an order has been made by any Judge of the Chancery Division for the winding up of any company under the Companies Acts, 1862 and 1869, or for the administration of the assets of any testator or intestate, the Judge in whose Court such winding up or administration shall be pending shall have power, without any further consent, to order the transfer to such Judge of any action pending in any other division brought or continued by or against such company, or by or against the executors or administrators of the testator or intestate whose assets are being so administered, as the case may be.

In a winding up action this order may be obtained *ex parte* (*Re Landore Siemens Steel Co.*, 10 Ch. D. 489); and Malins, V. C., in *Field* v. *Field*, W. N. 1877, 98, thought it a more convenient practice in administration actions, leaving the other side to move to discharge the order if it was thought desirable. (See also *Whitaker* v. *Robinson*, *Ibid.* 201.)

In administration the action must be against the executor *qua* executor. (*Chapman* v. *Mason*, 40 L. T. 678.)

Under this rule such an action against an executor will be transferred, although it is against him personally for a devastavit. (*Re Timms*, 26 W. R. 691.)

Chancery and Probate Divisions.

3. Any action transferred to the Chancery Division or the Probate Division, shall, by the order directing the transfer, be directed to be assigned to one of the Judges of such Division to be named in the order.

Consolidation of actions.

4. Actions in any division or divisions may be consolidated by order of the Court or a Judge in the manner heretofore in use in the Superior Courts of Common Law.

Under this rule, adopting the old practice at common law, the Court can only consolidate actions at the instance of defendants, and not on the application of a number of different plaintiffs against the same defendant. (*Smith* v. *Chadwick*, 4 Ch. D. 869.)

In case the plaintiffs will not agree to allow one action to be tried as a test action, the Court will stay proceedings in all actions but one, and see what becomes of that one. In the absence of agreement, the plaintiff in an action thus constituted a test action has no right to be indemnified against costs by the other plaintiffs. If the trial of the original test action has failed to be a real trial of the issue between the plaintiffs and the defendants, without any fault of the other plaintiffs, the Court has power to substitute another in its place. (*Amos* v. *Chadwick*, 9 Ch. D. 459.)

Where an action is commenced that covers the same ground as one already existing, together with some further relief, it will be stayed as to the first part. (*Morton* v. *Quick*, 26 W. R. 441.)

ORDER LII.

Interlocutory Orders as to Mandamus Injunctions or Interim Preservation of Property, &c.

Interim order.

1. When by any contract a *prima facie* case of liability is established, and there is alleged as matter of defence a right to be relieved wholly or partially from such liability, the Court or a Judge may make an order for the preservation or interim custody of the subject-matter of the litigation, or may order that the amount in dispute be brought into Court or otherwise secured.

In *Hyde* v. *Warden*, 1 Ex. D. 309, the plaintiff having appealed, the Court of Appeal allowed him to give notice of motion for the appointment of a receiver and manager (no previous application having been made to the Divisional Court or a Judge), and subsequently appointed him receiver and manager, without security, upon the usual undertaking.

Perishable goods.

3. It shall be lawful for the Court or a Judge, on the application of any party to any action, to make any order for the sale, by any person or persons named in such order, and in such manner and on such terms as to the Court or Judge may seem desirable, of any goods, wares, or merchandise which may be of a perishable nature or likely to injure from keeping, or which for any other just and sufficient reason it may be desirable to have sold at once.

In *Bartholomew* v. *Freeman*, 3 C. P. D. 316, the Court ordered a horse to be sold, on the ground that it was consuming its value in food, and there was no reason why it should not be sold.

General powers.

3. It shall be lawful for the Court or a Judge, upon the application of any party to an action, and upon such terms as may seem just, to make any order for the detention, preservation, or inspection of any property, being the subject of such action, and for all or any of the purposes aforesaid to authorise any person or persons to enter upon or into any land or building in the possession of any party to such action, and for all or any of the purposes aforesaid to authorise any samples to be taken, or any observation to be made or experiment to be tried, which may seem necessary or expedient for the purpose of obtaining full information or evidence.

Where the defendant in an action for obstruction of light and air had not delivered his statement of defence, Archibald, J., refused an order for inspection until he had disclosed his defence. (W. N. 1876, 53.)

On the affidavit of plaintiff, stating that the property was rapidly being damaged, the Court of Appeal appointed him receiver and manager, though no application for this purpose had been made, either to the Divisional Court or a Judge. (*Hyde* v. *Warden*, 1 Ex. D. 309.)

Under this rule, the Judge of the Probate Division has made an order prohibiting the dealing with the shares in a ship, part of the estate of an intestate, under 17 & 18 Vict. c. 104, s. 65. (*Nicholas* v. *Dracachis*, 1 P. D. 72.)

In *Velati* v. *Braham*, 46 L. J. C. P. 415, jewellery was ordered to be placed in the custody of an officer of the Court, to abide the result of an action.

Application, how made.

4. An application for an order under section 25, sub-section 8, of the Act, or under Rules 2 or 3 of this Order, may be made to the Court or a Judge by any party. If the application be by the plaintiff for an order under the said sub-section 8, it may be made either *ex parte* or with notice, and if for an order under the said Rules 2 or 3 of this Order it may be made after notice to the defendant at any time after the issue of the writ of summons, and if it be by any other party, then on notice to the plaintiff, and at any time after appearance by the party making the application.

There is great objection to granting applications under this rule *ex parte*. But where the plaintiffs had filed affidavits that the defendants had in their possession old cases for brandy which had been used by the plaintiffs, and had their brand upon them, and which the defendants were now filling with their own brandy, and selling as the plaintiffs', Malins, V. C., granted an order for taking samples on *ex parte* motion. (*Hennessy* v. *Bohmann*, W. N. 1877, 14.)

When the object of the motion would be otherwise defeated, the Court may grant an *ex parte* application. (*Meluish* v. *Milton*, 24 W. R. 697.)

When it was alleged that trustees were on the eve of bankruptcy, a receiver was appointed on an *ex parte* application before the service of the writ. (*Re H.'s Estate*, 1 Ch. D. 276.)

A defendant may apply for the appointment of a receiver, although the plaintiff has already served notice of motion for the same purpose. (*Sargent* v. *Read*, 1 Ch. D. 600.)

Interim order, time for.

5. An application for an order under Rule 1 may be made by the plaintiff at any time after his right thereto appears from the pleadings; or, if there be no pleadings, is made to appear by affidavit or otherwise to the satisfaction of the Court or a Judge.

Property subject to lien.

6. Where an action is brought to recover, or a defendant in his statement of defence seeks by way of counter-claim to recover specific property other than land, and the party from whom such recovery is sought does not dispute the title of the party seeking to recover the same, but claims to retain the property by virtue of a lien or otherwise as security for any sum of money, the Court or a Judge may, at any time after such last-mentioned claim appears from the pleadings, or, if there be no pleadings, by affidavit or otherwise to the satisfaction of such Court or Judge, order that the party claiming to recover the property be at liberty to pay into Court, to abide the event of the action, the amount of money in respect of which the lien or security is claimed, and such further sum (if any) for interest and costs as

such Court or Judge may direct, and that upon such payment into Court being made, the property claimed be given up to the party claiming it.

Conduct of sale under a will. R. S. C. March, 1879.

6*a*. Whenever the trusts of any will or settlement are being administered, and a sale is ordered of any property vested in the trustees of such will or settlement upon trust for sale or with power of sale by such trustees, the conduct of such sale shall be given to such trustees unless the Judge shall otherwise direct.

Writ of injunction abolished. R. S. C. April, 1880.

8. No writ of injunction shall be issued. An injunction shall be by a judgment or order, and any such judgment or order shall have the effect which a writ of injunction previously had.

ORDER LIII.

Motions and other Applications.

Applications to Court to be by motion.

1. Where by these Rules any application is authorised to be made to the Court or a Judge in an action, such application, if made to a Divisional Court or to a Judge in Court, shall be made by motion.

Order to show cause.

2. No rule or order to show cause shall be granted in any action, except in the cases in which an application for such rule or order is expressly authorised by these rules.

The exceptions are:—

Motions for a new trial in a Superior Court, Order XXXIX.

Motions for a new trial in an action remitted to a County Court, Order LVIIA, note. (As to time for motion, see same.) Motions which are not made in any action, but are proceedings within the meaning of Order I., Rule 3. (*Phillips* v. *Gill*, 1 Q. B. D. 78, *Re Goods of Cartwright*, 1 P. D. 422.

A motion to have a report sent back to a referee should be made on notice to the other side. (*Graves* v. *Taylor*, 27 W R. 412.)

An order *nisi* to strike a solicitor off the Rolls, when he is not before the Court, will not be granted. The proper course is to serve notice of motion. (*Re a Solicitor*, W. N. 1880, 36.)

Notice of motion.

3. Except where by the practice existing at the time of the passing of the said Act any order or rule has heretofore been made *ex parte* absolute in the first instance, and except where by these rules it is otherwise provided, and except where the motion is for a rule to show cause only, no motion shall be made without previous notice to the parties affected

thereby. But the Court or Judge, if satisfied that the delay caused by proceeding in the ordinary way would or might entail irreparable or serious mischief, may make any order *ex parte* upon such terms as to costs or otherwise, and subject to such undertaking, if any, as the Court or Judge may think just; and any party affected by such order may move to set it aside.

Where the party, who has given notice of motion to rescind an order, does not appear, he will be directed to pay the costs. (*Berry* v. *Exchange Co.*, 1 Q. B. D. 77.)

Where a party appeared to oppose a motion, and the notice of motion was bad on the face of it, held that he was not bound to appear, and was not entitled to his costs. (*Daubeny* v. *Shuttleworth*, 1 Ex. D. 53.)

As to when costs will be given, where the Court decides that it has no jurisdiction, see *Brown* v. *Shaw*, 1 Ex. D. 425, and *Great Northern Co.* v. *Inett*, 2 Q. B. D. 284.

A rule calling on a sheriff to show cause why he should not pay to the plaintiff's solicitors the money levied under a *fi. fa.* is a rule which should be moved for on notice of motion to the sheriff. (*Delmar* v. *Freemantle*, 3 Ex. D. 237.)

As to where a defendant does not appear, see Order XIX., Rule 6, *ante*.

If the appellants' solicitors write to withdraw their notice of appeal, respondent should move on notice to have it discharged to enable him to obtain his costs. (*Re Oakwell Collieries*, 7 Ch. D. 706.)

Two days' notice.

4. Unless the Court or Judge give special leave to the contrary, there must be at least two clear days between the service of a notice of motion and the day named in the notice for hearing the motion.

Where one of several defendants served did not appear or put in a defence, on the plaintiff moving to sign judgment against him, the Court directed a fresh notice of motion to be served on the defaulting defendant by filing it with the proper officer two clear days before the next motion day. (*Parsons* v. *Harris*, 6 Ch. D. 694.)

Failure to give notice.

5. If on the hearing of a motion or other application the Court or Judge shall be of opinion that any person to whom notice has not been given ought to have or to have had such notice, the Court or Judge may either dismiss the motion or application, or adjourn the hearing thereof, in order that such notice may be given, upon such terms, if any, as the Court or Judge may think fit to impose.

Adjournment of hearing.

6. The hearing of any motion or application may from time to time be adjourned upon such terms, if any, as the Court or Judge shall think fit.

Where defendant has not appeared.

7. The plaintiff shall, without any special leave, be at liberty to serve any notice of motion or other notice, or any petition or summons upon any defendant, who, having been duly served with a writ of summons to appear in the action, has not appeared within the time limited for that purpose.

Where a defendant who has been served personally with a summons under this rule does not appear, the summons need not be filed under Order XIX., Rule 6. (*Whitaker* v. *Thurston*, W. N. 1876, 232.)

Before appearance.

8. The plaintiff may, by leave of the Court or a Judge to be obtained *ex parte*, serve any notice of motion upon any defendant along with the writ of summons, or at any time after service of the writ of summons and before the time limited for the appearance of such defendant.

ORDER LIV.

Applications at Chambers.

By summons.

1. Every application at chambers authorised by these rules shall be made in a summary way by summons.

Jurisdiction of master and registrar.

2. In the Queen's Bench, Common Pleas, and Exchequer Divisions a master, and in the Probate, Divorce, and Admiralty Division a registrar, may transact all such business and exercise all such authority and jurisdiction in respect of the same as under the Act, or the schedule thereto, or these rules, may be transacted or exercised by a Judge at chambers, except in respect of the following proceedings and matters; that is to say,—

All matters relating to criminal proceedings or to the liberty of the subject;

The removal of actions from one division or Judge to another division or Judge;

The settlement of issues, except by consent;

Discovery, whether of documents or otherwise, and inspection, except by consent;

Appeals from district registers;

Interpleader other than such matters arising in interpleader, as relate to practice only, except by consent;

Prohibitions;

Injunctions and other orders under sub-section 8

of section 25 of the Act, or under Order LII., Rules 1, 2, and 3 respectively;
Awarding of costs, other than the costs of any proceeding before such master;
Reviewing taxation of costs;
Charging orders on stock, funds, annuities, or share of dividends or annual produce thereof;
Acknowledgments of married women.

District registrars have the same powers as masters under this rule. (Order XXXV., Rule 4.)

2*a*. The authority and jurisdiction of the district registrar or of a Master of the Queen's Bench, Common Pleas, and Exchequer Divisions, shall not extend to granting leave for service out of the jurisdiction of a writ of summons or of notice of a writ of summons. R. S. C. June, 1876. Exceptions.

The exception contained in Rule 2 of Order LIV. is hereby repealed so far as regards the proceedings herein-after mentioned before the Masters of the Queen's Bench, Common Pleas, and Exchequer Divisions, and such Masters may exercise all such authority and jurisdiction as may be exercised by a Judge at Chambers in respect of— R. S. C. Nov. 1878.

Discovery, whether of documents or otherwise, and inspection, except inspection under Order LII., Rule 3;

Orders nisi for charging stock funds, annuities, or share of dividends, or annual proceeds thereof;

Interpleader, except where all parties concerned consent to a final determination of the question in dispute without a jury or special case, and except where the sum in dispute is less than 50*l*., and one of the parties desires such a determination. In such cases the question shall be determined by the Judge, unless the parties agree to refer it to the Master.

3. If any matter appears to the Master proper for the decision of a Judge the Master may refer the same to a Judge, and the Judge may either dispose of the matter or refer the same back to the Master with such directions as he may think fit. Reference to Judge.

4. Any person affected by any order or decision of a Master may appeal therefrom to a Judge at Chambers. Such appeal shall be by summons, within four days after the decision complained of, or such further time as may be allowed by a Judge or Master. Appeal from master.

Fresh affidavits may be used on the appeal under this rule, as every appeal is now a rehearing. (W. N. 1875, 250.)

Order XXXV., Rule 7, allows an appeal from a district registrar in a matter in which he has jurisdiction only by consent; there is, however, no similar provision for a Master, although it was the practice before the Judicature Acts.

The summons must be returnable before the Judge within four days from the decision appealed against. (*Bell* v. *N. Staff. Ry. Co.*, 4 Q. B. D. 205.)

But the Court or a Judge may enlarge the time under Order LVII., Rule 6. (*Gibbons* v. *London Financial Association*, 4 C. P. D. 263.)

As to enlarging the time when no Judge sits at Chambers, see *Gibbons* v. *The London Financial Association*, Order LVII., Rule 6, *note*, *post*.

Appeal, stay when ordered.

5. An appeal from a Master's decision shall be no stay of proceeding unless so ordered by a Judge or Master.

R. S. C. March, 1879.

6. Rule 6 is hereby annulled, and the following shall stand in lieu thereof:—

Time for appeal.

In the Queen's Bench, Common Pleas, and Exchequer Divisions, every appeal to the Court from any decision at Chambers shall be by motion, and shall be made within eight days after the decision appealed against, or, if no Court to which such appeal can be made shall sit within such eight days, then on the first day on which any such Court may be sitting after the expiration of such eight days.

The practice under this rule seems to be settled by *Sterling* v. *Du Barry*, 5 Q. B. D. 65. Where an Order was made in Chambers on the 20th, the defendant on the 24th gave notice of appeal to a Divisional Court for Saturday the 28th; the Court sat on the 26th to hear motions, and was sitting on the 28th, but not for the purpose of hearing motions. The defendant brought forward his motion on the 30th, being Monday, and the next day on which the Court sat to hear motions. Held that the appeal was out of time, since a Court to which an application to enlarge the time could be made had been sitting within the eight days.

When the last of the eight days allowed terminates on a Sunday, the motion may be made on Monday, under the provisions of Order LVII., Rule 3, *post*. (*Taylor* v. *Jones*, 45 L. J. 110.)

The Court of Appeal has no jurisdiction to review a judgment of the Divisional Court dismissing an appeal from the Judge at Chambers, because no counsel appeared to support the appeal. (*Walker* v. *Budden*, 5 Q. B. D. 267.)

Procedure in chambers. R. S. C. April, 1880.

7. The following rules, 7 to 14, both inclusive, shall apply to all applications at Chambers in the Queen's Bench, Common Pleas, and Exchequer Divisions.

Rules 7 to 14, inclusive, do not apply to proceedings in district registries. (R. S. C., May, 1880, see Order XXXV., Rule 16, *ante*.)

Forms of summons. R. S. C. April, 1880.

8. A summons shall be in the Form H 1 in the schedule hereto, with such variations as circumstances require. It shall be addressed to all the persons on whom it is to be served.

Preparation and issue of summons. R. S. C. April, 1880.

9. A summons shall be prepared by the applicant or his solicitor, and shall be sealed in the central office, and when so sealed shall be deemed to be issued. The person obtaining a summons shall leave a copy thereof at the central office.

Hours of returns. R. S. C. April, 1880.

10. Unless a Judge otherwise specially directs, summonses for time only shall be returnable at 10.30 in the forenoon, and be heard by the Masters in priority to other business. Unless, as aforesaid, other summonses shall be returnable at successive hours, commencing at 11 in the forenoon, *and summonses to be attended by counsel shall not be returnable before 2 in the afternoon.* In settling the number of summonses returnable at each hour regard shall be had to the nature of the several applications.

Repealed R. S. C. May, 1880.

List of summonses. R. S. C. April, 1880.

11. Each summons, not being a summons for time only, shall, when issued, be entered by the proper officer in a list. The list of summonses shall distinguish those which a Master has jurisdiction to hear from those which a Master has not jurisdiction to hear, and those which are to be attended by counsel from those which are not to be so attended.

Hearing of summonses. R. S. C. April, 1880.

12. The summonses in each list for hearing by a Judge or Master shall be called on in their order. If when a summons is called on neither party appears, the summons shall be passed over until the list for the hour has been gone through. The summonses passed over shall then be called on a second time in their order. If neither party appears to a summons so called on it shall be struck out. If one party only appears, such order as seems just may, on an affidavit of service, be made *ex parte.* An affidavit of non-attendance shall not be required or allowed.

Form of order. R. S. C. April, 1880.

13. An order shall be in the Form H 2 in the schedule hereto, with such variations as circumstances require. It shall be sealed, and shall be marked with the name of the Judge or Master by whom it is made.

Filing consents to orders and adjournments. R. S. C. April, 1880.

14. Written consents to orders and adjournments shall be filed at the central office.

ORDER LV.

Costs.

Generally. Subject to the provisions of the Act, the costs of and incident to all proceedings in the High Court shall be in the discretion of the Court; but nothing herein contained shall deprive a trustee, mortgagee, or other person of any right to costs out of a particular estate or fund to which he would be entitled according to the rules hitherto acted upon in Courts of Equity: Provided, that where any action or issue is tried by a jury, the costs shall follow the event, unless upon application made at the trial for good cause shown the Judge before whom such action or issue is tried or the Court shall otherwise order.

The effect of this Order is to repeal the previous statutes as to costs; with the exception of such of the provisions of the County Court Act, 1867, as are expressly preserved by sec. 67 of the Judicature Act, 1873. (*Parsons* v. *Tirling*, 2 C. P. D. 119; *Garnett* v. *Bradley*, 3 App. Cases, 944.) Where, therefore, a plaintiff recovered a farthing damages in an action of slander, the event was held to be in his favour. This rule extends to a petition, under an Act which provides for the costs of such petition. (*Ex parte Mercers' Co.*, 10 Ch. D. 1.)

At the trial means *substantially* at the trial. If the finding were taken at the Judge's lodgings, and the trial were extended till the next morning in Court, that would be at the trial. But as the discretion of the Judge is to be exercised for good cause shown, counsel for the party against whom the order is made should have an opportunity afforded to him of discussing it. (*Collins* v. *Welch*, 5 C. P. D. 33; *Kynaston* v. *Mackinder*, 47 L. J. 76; *Baker* v. *Oakes*, 2 Q. B. D. 171.)

The Divisional Court has an original jurisdiction, to make an Order to deprive a successful party of the costs. (*Myers* v. *Defries*, 5 E. D. 180; *Siddons* v. *Lawrence*, 4 Q. B. D. 459.) Such application should be made within a reasonable time after the trial. (*Bowey* v. *Bell*, 4 Q. B. D. 95.)

A successful applicant may be made to pay the costs of the other side, if his application be deemed unnecessary. (*Fane* v. *Fane*, 13 Ch. D. 228.)

Interest. Formerly interest on costs would have run from the date of the incipitur; now it runs from the date of the Master's certificate, owing to the form of the writ. (*Schrœder* v. *Cleugh*, 46 L. J. 365.)

Reference. Where an action was referred to a district registrar (costs to follow the event) who awarded a balance of 4*l.* in favour of the defendant, and ordered judgment to be signed for the defendants, for the taxed costs of the action, counter-claim, and reference, it was held, that he had no authority to give the defendants the costs of the action; but that they must pay the costs of proving the claim, and the plaintiffs that of the counter-claim. *Cole* v. *Firth*, 40 L. T. 851.)

Where a cause has been referred to a Master with all the powers of certifying and amending of a Judge at *Nisi Prius*, a certificate that the action was suitable to be brought in the Supreme

Court, must be given in the award itself. (*Bedwell* v. *Wood*, 2 Q. B. D., 626; *Gelatti* v. *Wakefield*, 4 Ex. D. 249.

Where at the trial it was agreed that judgment should be entered for the plaintiff, subject to a reference, and there was no provision that judgment might be entered for defendants, if the amount paid into Court were sufficient; the Court refused to give the defendant his costs under those circumstances. (*Wimshurst Barrow Ship Building Co.*, 2 Q. B. D. 335.)

As to costs of a reference, as to damage in the Admiralty Division, see *The Consett*, 5 P. D. 77.

Payment into Court.

In an action of covenant, the defendant paid money into Court and denied the breach. The issues having been referred to an official referee, he reported that the money paid in was enough to satisfy the claim. It was held that the costs were in the discretion of the Court, and that the proper method of exercising it was, by allowing plaintiff his costs up to time of payment into Court, and the defendant his costs of the action after that time. (*Buckton* v. *Higgs*, 4 Ex. D. 174.)

On a writ specially indorsed with the amount of his debt and costs, a plaintiff, more than four days after service, accepted payment of the whole amount indorsed, without any agreement as to costs, it was held that defendant might have his costs taxed. (*Hoole* v. *Earnshaw*, 39 L. T. 410.)

When a defendant pays money into Court, the plaintiff should comply strictly with Order XXX., Rule 4; otherwise he loses his absolute right to costs, and the matter becomes one for the discretion of the Judge. (*Greaves* v. *Fleming*, 4 Q. B. D. 226.) As to what amounts to confessing a defence under Order XX., Rule 3, see *Callander* v. *Hawkins*, 2 C. P. D. 592; *Champion* v. *Formby*, 7 Ch. D. 273.)

Appeal, when.

An appeal will lie without leave from an order directing payment of costs, charges, and expenses (*Jones* v. *Chennell*, 8 Ch. D 503), not being an order as to costs only under Sec. 49 of the Act, 1873.

Where on an application to commit for contempt, the only order made is that defendant pay the costs; this order is subject to appeal. (*Witt* v. *Corcoran*, 2 Ch. D. 69; *Re Clements*, 46 L. J. Ch. 375.) But if the motion to commit be refused with costs, then it is within the section. (*Ashworth* v. *Outram*, 5 Ch. D. 943.)

As to where an appeal on costs involves a question of law and principle, see the *Rio Grande Co.*, 5 Ch. D. 282.

The principle on which the taxation of costs is to proceed would seem to be the subject of appeal. (*Marcus* v. *Gen. Navigation Co.*, W. N. 1876, 157.)

Costs on appeal.

When the Court of Appeal directs the payment of costs, the successful party is entitled to have them taxed and paid forthwith, unless there be a special direction to the contrary. (*Phillips* v. *Phillips*, 5 Q. B. D. 60.)

The costs of an appeal as a rule follow the event. (*Memorandum*, 1 Ch. D. 41, *Ex parte Masters*, 1 Ch. D. 113.)

As to salvage, see *City of Berlin*, 25 W. R. 793.

As to the costs when the Court dismisses an appeal on the ground of having no jurisdiction, see *Brown* v. *Shaw*, 1 Ex. D. 425; *Great Northern Ry. Co.* v. *Inett*, 2 Q. B. D. 284.

Appeal on costs. House of Lords.

On appeal to the House of Lords, if the solicitors give their personal undertaking to refund, an order for the recovery of costs will not be stayed pending the appeal. (*Grant* v. *Banque Franco-Egyptienne*, 3 C. P. D. 202.)

An action will lie on an order of the House of Lords, directing an unsuccessful appellant to pay the respondent's costs. (*Marbella Iron Co.* v. *Allen*, 38 L. T. 815.)

Abandoned motion. Malins, V. C., has laid down a rule that when counsel intends to ask for the costs of an abandoned motion, he should communicate his intention to the counsel for the opposite side. (*Aitken* v. *Dunbar*, 25 W. R. 366.)

New trial. Where a new trial has been granted, the successful party on the second trial is, in the absence of any Order to the contrary, entitled to the costs of the first. (*Field* v. *G. W. R. Co.*, 3 Ex D. 261.)

The costs of the first trial and of the rule for a new trial follow the event. (*Creen* v. *Wright*, 2 C. P. D. 354.) Where the Court of Appeal make a rule absolute for a new trial, they will give a successful appellant the costs of the appeal in any event. (*Anderson* v. *Pellier*, W. N. 1878, 129.)

Second trial. If the plaintiff on a second trial recover a mere nominal sum, the Judge may order him to pay the costs of both trials. (*Harris* v. *Petherick*, 4 Q. B. D. 611.)

County Court Act. An action for compensation for damage to goods, through the negligence of common carriers, is an action founded on contract, within the meaning of the County Court Act, 1867; and if the plaintiff recover less than 20*l.* he is not entitled to his costs. (*Fleming* v. *Manchester Ry. Co.*, 4 Q. B. D. 81.)

Detinue is an action founded on contract. (*Bryant* v. *Herbert*, 3 C. P. D. 389.)

If the plaintiff succeed in proving a claim of over 50*l.*, though the ultimate sum he recover is under 20*l.*, owing to a counter-claim, he is entitled to his costs of proving it, and the general costs of the action. (*Potter* v. *Chambers*, 4 C. P. D. 457; *Neale* v. *Clarke*, 4 Ex. D. 286.) But he cannot elude the operation of the 5th sec. of County Court Act, 1867, by marking his writ too high. (*Chatfield* v. *Sedgwick*, 4 C. P. D. 459.) The sec. does not apply to a counter-claim, as a defendant is not expected to refrain from deducting from the original claim what he thinks due. (*Blake* v. *Appleyard*, 3 Ex. D. 195; *Davidson* v. *Grey*, 40 L. T. 192.)

The *event* is complex, and the word must be read distributively, as regards distinct causes of action. The general costs of the cause follow the judgment, but the costs of the particular issues must be respectively taxed, in favour of the party who has succeeded on them. (*Myers* v. *Defries*, 5 Ex. D. 180.)

When the claim and counter-claim are both dismissed with costs, the defendant has only to pay the sum by which the costs have been augmented by the counter-claim. (*Saner* v. *Bilton*, 11 Ch. D. 416.)

Co-defendants. Where two parties unnecessarily increased the cost by severing their defences, they were only allowed one set of costs between them. (*Bull* v. *London School Board*, 34 L. T. 674.)

As to executors, see *Smith* v. *Cremer*, 24 W. R. 51; *Heugh* v. *Scard*, *Ibid.* 51. As to costs of a partnership action, see *Potter* v. *Jackson*, 13 Ch. D. 845.

Detinue. In detinue a fancy price placed on an article to insure its return, is not a criterion on the question of costs. (*Halliman* v. *Price*, 27 W. R. 490.)

Third party. There is no jurisdiction to impose terms, as to the payment of costs of a party brought in under Rule 18 of Order XVI. (*The Yorkshire Waggon Co.* v. *Newport Coal Co.*, 5 Q. B. D., 268.) Nor is there any power to alter a previous order, for the pay-

ment of the costs of the proceedings taken to bring him before the Court. though eventually he be dismissed from the action, with costs to be paid by the defendants. (*Benyon* v. *Godden*, 4 Ex. D. 246.

When a third party is brought, or comes in for his own benefit, to reduce the damages the plaintiff will not be obliged to pay two sets of costs. (*Williams* v. *South-Eastern Railway Co.*, 26 W. R. 352.)

Next friend.

An order against a next friend for payment of costs is final, unless there be some reservation in the order. (*Caley* v. *Caley*, 25 W. R. 528.)

R. S. C. Feb. 1876. Security for costs.

2. In any cause, or matter, in which security for costs is required, the security shall be of such amount, and be given at such time or times, and in such manner and form as the Court or a Judge shall direct.

The Court may order security for costs to be given, for such an amount, and at such time or times, as may seem best. (*Republic of Costa Rica* v. *Erlanger*, 3 Ch. D. 69.)

A married woman in receipt of a large separate income will not be required to give security for costs. (*Noel* v. *Noel*, 13 Ch. D. 510.)

A plaintiff who has gone into liquidation may be ordered to give security for past and future costs, if there has been no unnecessary delay in making the application. (*Brocklebank* v. *King's Lynn Co.*, 5 C. P. D. 365.)

When a Company in liquidation amended their statement of claim in an action, by which they raised a fresh case, involving much additional evidence, they were directed to give security for costs. (*Northampton Waggon Co.* v. *Midland Waggon Co.*, 7 Ch. D. 500.)

Persons out of jurisdiction.

A plaintiff who goes out of the jurisdiction may be required to give security for costs. (*Massey* v. *Allen*, 12 Ch. D. 807.) If he be a foreigner, an order for him to give security for costs will not be granted, unless it be shown that he is actually abroad at the time of the application. (*Redondo* v. *Chaytor*, 4 Q. B. D. 453.) If he fail to give the required security, the action may be dismissed for want of prosecution, without getting the order for giving security discharged. (*De La Grange* v. *McAndrew*, 4 Q. B D. 310.)

A defendant has a right to take any proceeding to defend himself, without being called upon to give security for costs. (*Re Percy Iron Co.*, 2 Ch. D. 531.) Even where he is nominally plaintiff, though really defendant. (*Belmonte* v. *Aynard*, 4 C. P. D. 352.) He may also set up a counter-claim which is less than the original claim. (*Mapleson* v. *Masini*, 5 Q. B. D. 144.) The contrary has apparently been held in an Admiralty action *in rem* (*The Julia Fisher*, 2 P. D. 115); but it is difficult to reconcile the reasoning in this case with the reasoning in *Mapleson* v. *Massini*: "A defendant ought not to be called upon to give security for costs, because in defending himself he incidentally asks for damages arising out of the same transaction."

A plaintiff will not be obliged to give security for the costs of a counter-claim, which is in the nature of a new action. (*Winterfield* v. *Bradnum*, 3 Q. B. D. 324.)

As to security by the owners of the cargo in an action in the Admiralty Division, see *The Carnarvon Castle*, 26 W. R. 876.

When a County Court Judge was made a respondent, the Court thought it an additional reason for ordering security to be given. (*Clarke* v. *Roche*, 46 L. J. Ch. 372.)

Where there was apparently a very doubtful point of law, the Court thought the plaintiff ought not to be required to give security. (*Rourke* v. *White Moss Co.*, 1 C. P. D. 556.)

As to actions *in rem*, see *The Victoria*, 1 P. D. 280.

R. S. C. April, 1880. Security for costs where given by bond.

3. Where a bond is to be given as security for costs, it shall, unless the Court or a Judge otherwise directs, be given to the party or person requiring the security, and not to an officer of the Court.

ORDER LVI.

Notices and Paper, &c.

How given.

1. All notices required by these rules shall be in writing, unless expressly authorised by a Court or Judge to be given orally.

Printing.

2. Proceedings required to be printed shall be printed on cream wove machine drawing foolscap folio paper, 19 lbs. per mill ream, or thereabouts, in pica type leaded, with an inner margin about three quarters of an inch wide, and an outer margin about two inches and a half wide.

Affidavits.

3. Any affidavit may be sworn to either in print or in manuscript, or partly in print and partly in manuscript.

As to printing depositions and affidavits, see R. S. C. (Costs), Orders I.—III.

ORDER LVII.

Time.

Calendar month.

1. Where by these rules, or by any judgment or order given or made after the commencement of the Act, time for doing any act or taking any proceeding is limited by months, not expressed to be lunar months, such time shall be computed by calendar months.

Sunday, Christmas, Good Friday.

2. Where any limited time less than six days from or after any date or event is appointed or allowed for doing any act or taking any proceeding, Sunday, Christmas Day, and Good Friday shall not be reckoned in the computation of such limited time.

When the time allowed for appealing exceeds six days, Sundays are not to be excluded from the computation. (*Ex parte Viney, Re Gilbert*, 4 Ch. D. 794). Unless the last day falls on a Sunday. (*Taylor* v. *Jones*, 45 L. J. 110; see note to next rule.)

Expiration of time. Officesclosed.

3. Where the time for doing any act or taking any proceeding expires on a Sunday, or other day on which the offices are closed, and by reason thereof such act or proceeding cannot be done or taken on that day, such act or proceeding shall, so far as regards the time of doing or taking the same, be held to be duly done or taken if done or taken on the day on which the offices shall next be open.

Where eight days were allowed for appeal, and the last expired on a Sunday, the appeal was allowed to be heard on Monday. (*Taylor* v. *Jones*, 45 L. J. 110.)

Pleadings in long vacation.

4. No pleadings shall be amended or delivered in the long vacation, unless directed by a Court or a Judge.

Long vacation.

5. The time of the long vacation shall not be reckoned in the computation of the times appointed or allowed by these rules for filing, amending, or delivering any pleading, unless otherwise directed by a Court or a Judge.

Enlargement.

6. A Court or a Judge shall have power to enlarge or abridge the time appointed by these rules, or fixed by any order enlarging time, for doing any act or taking any proceeding, upon such terms (if any) as the justice of the case may require, and any such enlargement may be ordered although the application for the same is not made until after the expiration of the time appointed or allowed.

Special leave to appeal after the expiration of the time will not be granted *ex parte*. (*Evennett* v. *Lawrence*, 4 Ch. D. 139.)

The Court will renew a writ of summons, notwithstanding that twelve months have elapsed since the date of the original writ (the date will not be computed from an amended one). (*Re Jones*, 25 W. R. 303), unless the claim would be otherwise barred by the Statute of Limitations. (*Doyle* v. *Kaufmann*, 3 Q. B. D. 7.)

Where judgment was signed through the negligence of the solicitor, the Court granted an extension of time to enable defendant to apply to set aside the judgment. (*Michell* v. *Wilson*, 25 W. R. 380.)

When no Judge sits at Chambers, within the four days allowed for an appeal from a Master, under Order LIV., Rule 4, the summons should be made returnable for the first day that the Judge sits; he may then enlarge the time, and hear the appeal without any summons being taken out for that purpose. (*Gibbons* v. *The London Financial Association*, 4 C. P. D. 263.)

As to costs of the first application under this rule, see R. S. C. (Costs), Rule 22, *post.*

An order had been made dismissing an action, unless interrogatories were answered by a certain day. The affidavit was not filed on that day; the Court nevertheless held they had power to extend the time for appealing against the order, though the time for appealing had elapsed. (*Burke* v. *Rooney*, 27 W. R. 915.)

But where a similar order had been made, unless the statement of claim were delivered in a week, and the plaintiff, instead of getting the time extended for appealing, tried to have the time for delivery of statement of claim extended, it was held that the action was at an end, and the Master had no power to make an order. (*Whistler* v. *Hancock*, 3 Q. B. D. 83.)

The distinction between these two cases is, that in *Burke* v. *Rooney* the success of the appeal would, retrospectively, prevent the action from being considered terminated.

The consent of the parties is insufficient to keep alive an action, which would otherwise cease to exist. (*King* v. *Davenport*, 4 Q. B. D. 402.)

The power of the Court only applies to the specified periods of time, and not to the order in which the proceedings are to be taken. (*Pilcher* v. *Hinds*, 27 W. R. 789.)

The Court of Appeal will rarely enlarge the time for bringing an appeal after it has expired. (See *Craig* v. *Phillips*, Order LVIII., Rule 15, *note*, *post.*)

This section does not apply to the County Courts Act, 1875, sec. 6 of 38 & 39 Vict. c. 50, which limits the time for appealing against a county court decision to eight days. (*Tennant* v. *Rawlings*, 4 C. P. D. 133; S. C. *Mason* v. *Wirrall Board*, P. 248.)

R. S. C. April, 1880. Enlargement of time by consent.

6*a*. The time for delivering or amending any pleading may be enlarged by consent in writing, without application to the Court or a Judge.

R. S. C. Feb. 1876. Admiralty actions.

7. In Admiralty actions the Court or a Judge shall have power at any stage of the proceedings in such action, upon a motion or summons by either party, calling upon the other party to show cause why the trial of such action should not take place on an early day to be appointed by the Court or a Judge, to appoint that such trial shall take place on any day or within any time which to the Court or Judge shall seem fit; and for such purpose the Court or Judge shall have power upon such motion or summons to dispense with the giving of notice of trial, or to abridge the time or times appointed by these rules for giving such notice, for the delivery of pleadings, or for doing any other act or taking any other proceeding in the action, upon such terms (if any) as the nature of the case may require.

Service. R. S. C. April, 1880.

8. Service of pleadings, notices, summonses, orders, rules, and other proceedings shall be effected before

the hour of six in the afternoon, except on Saturdays, when it shall be effected before the hour of two in the afternoon. Service effected after six in the afternoon on any week-day except Saturday shall be deemed to have been effected on the following day. Service effected after two in the afternoon on Saturday shall be deemed to have been effected on the following Monday.

ORDER LVIIA.

DIVISIONAL AND OTHER COURTS.

1. The following proceedings and matters shall continue to be heard and determined before the Divisional Courts; but nothing herein contained shall be construed so as to take away or limit the power of a single Judge to hear and determine any such proceedings or matters in any case in which he has heretofore had power to do so, or so as to require any interlocutory proceeding therein heretofore taken before a single Judge to be taken before a Divisional Court:— R. S. C. Dec. 1876. Proceedings before Divisional Courts.

Proceedings on the Crown side of the Queen's Bench Division.

Appeals from revising barristers, and proceedings relating to election petitions, parliamentary and municipal.

Appeals under section 6 of the County Courts Act, 1875.

Proceedings on the revenue side of the Exchequer Division.

Proceedings directed by any Act of Parliament to be taken before the Court, and in which the decision of the Court is final.

Cases stated by the Railway Commissioners under the 36 & 37 Vict. c. 48.

Cases of habeas corpus, in which a Judge directs that a rule *nisi* for the writ, or the writ be made returnable before a Divisional Court.

Special cases where all parties agree that the same be heard before a Divisional Court.

Appeals from Chambers in the Queen's Bench, Common Pleas, and Exchequer Divisions, and applications for new trials in the said Division where the action has been tried with a jury.

This order is framed to carry into effect sec. 17 of the App. Jur. Act, 1876. As to the peculiar jurisdiction of the Q. B. D., C. P. D., and Ex. D., see sec. 34 of the Act 1873, *note*.

As to special case, see Order XXXIV., Rules 6, 7.

Sec. 6 of the County Court Act, 1875 (38 & 39 Vict. c. 50), is subjoined :—

In any cause, suit, or proceeding, other than a proceeding in bankruptcy, tried or heard in any county court, and in which any person aggrieved has a right of appeal, it shall be lawful for any person aggrieved by the ruling, order, direction, or decision of the Judge, at any time within eight days after the same shall have been made or given; to appeal against such ruling, order, direction, or decision by motion to the Court to which such appeal lies, instead of by special case, such motion to be *ex parte* in the first instance, and to be granted on such terms as to costs, security, or stay of proceedings as to the Court to which such motion shall be made, shall seem fit. And if the Court to which such appeal lies, be not then sitting, such motion may be made before any Judge of a Superior Court sitting in chambers. And at the trial or hearing of any such cause, suit, or proceeding, the Judge, at the request of either party, shall make a note of any question of law raised at such trial or hearing, and of the facts in evidence in relation thereto, and of his decision thereon, and of his decision of the cause, suit, or proceeding, and he shall at the expense of any person or persons being party or parties in any such cause, suit, or proceeding requiring the same for the purpose of appeal, furnish a copy of such note or allow a copy to be taken of the same, by or on behalf of such person or persons, and he shall sign such copy, and the copy so signed shall be used and received on such motion, and at the hearing of such appeal.

If there be a Divisional Court sitting to which the application can be made, it should not be made to the Judge at Chambers. (*Brown* v. *Shaw*, 1 Ex. D. 425.)

The Judge in Chambers, before whom such a motion is made, cannot adjourn the further hearing of it to the next sitting of the Court to which the appeal lies, but must himself hear and determine it. (*Button* v. *Woolwich Building Society*, 5 Q. B. D. 88.)

The request to the Judge to take a note must be made during or immediately at the end of the trial. (*Pierpoint* v. *Cartwright*, 5 C. P. D. 139.) The attention of the Judge should be drawn specifically to the question of law intended to be raised, and the evidence in relation to it. Where the motion has been refused a rule calling on the Judge to state a case will not be granted. (*Rhodes* v. *Liverpool Investment Co.*, 4 C. P. D. 425.)

It would appear that the time for moving under this section cannot be extended. (*Tennant* v. *Rawlings*, 4 C. P. D. 133.) The Queen's Bench Division, though divided in opinion, heard a case after the eight days had elapsed where the appellants had used all possible diligence. (*Mason* v. *Wirrall Board*, 4 Q. B. D. 459.) The County Court Judge cannot extend the time by allowing his judgment to be post-dated. (*Wilberforce* v. *Sowton*, 48 L. J. 28.)

In the Common Law jurisdiction of the County Courts there is no appeal from the decision of the Judge on a decision of the Judge on a question of fact. (*Cousins* v. *Lombard Bank*, 1 Ex. D. 404.)

This section applies to cases where there is an appeal only by leave. (*Turner* v. *G. W. R. Co.* 2 Q. B. D. 125.)

It does not apply to a garnishee order made under the County Court Rules, 1875. (*Mason* v. *Wirrall Board, ubi suprà.*)

The Divisional Court has power to order judgment to be entered. (*Whiteman* v. *Hawkins*, 1 C. P. D. 13.)

2. Where, by sect. 17 of the Appellate Jurisdiction Act, 1876, or by these rules, any application ought to be made to, or any jurisdiction exercised by the Judge before whom an action has been tried, if such Judge shall die or cease to be a Judge of the High Court, or if such Judge shall be a Judge of the Court of Appeal, or if for any other reason it shall be impossible or inconvenient that such Judge should act in the matter, the president of the division to which the action belongs may either by a special Order in any action or matter, or by a general order applicable to any class of actions or matters, nominate some other Judge to whom such application may be made, and by whom such jurisdiction may be exercised. R. S. C. Dec. 1876.

3. Every vacation Judge shall have the same power and authority as heretofore. R. S. C. Dec. 1876.

ORDER LVIII.

Appeals.

1. Bills of exceptions and proceedings in error shall be abolished.

This rule does not apply to proceedings in the House of Lords; hence the practice of giving bail in error survives there. (*Justice* v. *Mersey Iron Co.* 1 C. P. D. 575.) As to an appeal from the Court of Crown cases reserved on an error on the record, see sec. 47 of the Act of 1873.

2. All appeals to the Court of Appeal shall be by way of re-hearing, and shall be brought by notice of motion in a summary way, and no petition, case, or other formal proceeding other than such notice of motion shall be necessary. The appellant may by the notice of motion appeal from the whole or any part of any judgment or order, and the notice of motion shall state whether the whole or part only of such judgment or order is complained of, and in the latter case shall specify such part. Appeal, a rehearing. From whole or part.

Although every appeal is by way of re-hearing, it is not competent for an appellant to raise a case totally inconsistent with and contradictory to the original one. (*Ex parte, Reddish*, 5 Ch. D. 882.)

The Court has no power to re-hear appeals. A new action in the High Court to have the judgment set aside must be commenced, where facts discovered since the trial would, under the old system, have justified a bill of review. (*Flower* v. *Lloyd*, 6 Ch. D. 297.) Neither has it any original jurisdiction, save that which is incidental to the exercise of its appellate jurisdiction. (*Ibid.*; *Allen* v. *United Kingdom Telegraph Co.*, 24 W. R. 898; *Re Dunraven Coal Co.*, 24 W. R. 37.)

When a case has been heard by a Judge of the Probate Division, the parties may appeal to the Court of Appeal, or apply to the Judge for a re-hearing under Probate Court Orders, July 1862, Rule 60. (*Sugden* v. *Lord St. Leonard's*, 1 P. D. 154.)

An appeal from the Lord Mayor's Court, upon a question of law arising upon the record, lies to the Court of Appeal. (*Le Blanch* v. *Reuter Telegraph Co.*, 1 Ex. D. 408.) But where there has been a motion for a new trial in a Divisional Court, under sec. 10 of the Mayor's Court Act, 20 & 21 Vict. c. 157, no appeal will lie without special leave being given. (*Appleford* v. *Judkins*, 3 C. P. D. 489.)

As to appeal in interpleader proceedings, see *Witt* v. *Parker*, and *Dodds* v. *Shepherd*, p. 93.

As to special case stated by an arbitrator, see *Mirabita* v. *Imperial Ottoman Bank*, 3 Ex. D. 164.

On an appeal on the facts, the Court of Appeal will give great weight to the consideration, that the Judge below was able to observe the demeanour of the witnesses. (*Bigsby* v. *Dickinson*, 4 Ch. D. 24.)

A claim under a winding-up having been refused, the counsel for the liquidator asked the counsel for the claimant, whether he intended to carry the case further, and on being informed that he did not, said that he should not ask for costs, an order was drawn up dismissing the claim without costs, and not containing any undertaking not to appeal. Held that as no undertaking not to appeal was embodied in the order, an appeal would lie. (*Re Hull and County Bank, Trotter's claim*, 13 Ch. D. 261.)

Parties to be served.

3. The notice of appeal shall be served upon all parties directly affected by the appeal, and it shall not be necessary to serve parties not so affected; but the Court of Appeal may direct notice of the appeal to be served on all or any parties to the action or other proceeding, or upon any person not a party, and in the meantime may postpone or adjourn the hearing of the appeal upon such terms as may seem just, and may give such judgment and make such order as might have been given or made if the persons served with such notice had been originally parties. Any notice of Appeal may be amended at any time as to the Court of Appeal may seem fit.

Where the proceedings are irregular, the service of the notice may be withdrawn, and a fresh notice served on payment of the costs. (*Norton* v. *London and North-Western Railway*, 40 L. T. 597.)

On a motion of appeal against the whole of an order, or for

variation of it, an unspecified particular in the Order may be varied. (*Re Duchess of Westminster Silver Lead Ore Co.*, 10 Ch. D. 307.)

When the appellant does not appear, the respondent is entitled to have the appeal dismissed with costs, without giving any proof that he has been served with notice of appeal. (*Ex parte Lows, Re Lows*, 7 Ch. D. 160.)

A mere notice of an intention to appeal, though informal, was held sufficient. (*Re Jewell Tin Mining Co.*, 8 Ch. D. 806.)

If all the parties affected by the appeal are not served, the Court will direct the hearing to stand over for that purpose. (*Hunter* v. *Hunter*, 24 W. R. 304 and 527; *Purnell* v. *Great Western Railway*, 1 Q. B. D. 636.)

Time for appeal.

4. Notice of appeal from any judgment, whether final or interlocutory, shall be a fourteen days' notice, and notice of appeal from any interlocutory order shall be a four days' notice.

As to interlocutory orders, see note to Rule 15, *post*.

Powers of Court of Appeal. Fresh evidence.

5. The Court of Appeal shall have all the powers and duties as to amendment and otherwise of the Court of First Instance, together with full discretionary power to receive further evidence upon questions of fact, such evidence to be either by oral examination in court, by affidavit, or by deposition taken before an examiner or commissioner. Such further evidence may be given without special leave upon interlocutory applications, or in any case as to matters which have occurred after the date of the decision from which the appeal is brought. Upon appeals from a Judgment after trial or hearing of any cause or matter upon the merits, such further evidence (save as to matters subsequent as aforesaid) shall be admitted on special grounds only, and not without special leave of the Court. The Court of Appeal shall have power to give any judgment and make any order which ought to have been made, and to make such further or other order as the case may require. The powers aforesaid may be exercised by the said Court, notwithstanding that the notice of appeal may be that part only of the decision may be reversed or varied, and such powers may also be exercised in favour of all or any of the respondents or parties, although such respondents or parties may not have appealed from or complained of the decision. The Court of Appeal shall have power to make such order as to the whole or any part of the costs of the appeal as may seem just.

Where witnesses are subpœnaed on the appeal, to establish facts not discovered at the time the action was tried, there must be a motion for leave to examine them, previous to the hearing of the appeal. (*Dicks* v. *Brooks*, 13 Ch. D. 652.) But if the fresh evidence be only documentary, the party may give notice to the other side of his intention to apply at the hearing for leave to produce such evidence. (*Hastie* v. *Hastie*, 1 Ch. D. 562.) See also *Jones* v. *Chennell*, 8 Ch. D. 505.

R. S. C. March, 1879. New trial.

5*a*. If upon the hearing of an appeal from a judgment pronounced by a Judge or Court on the verdict or finding of a jury, or of a Judge without a jury, it shall appear to the Court of Appeal that a new trial ought to be had, it shall be lawful for the said Court of Appeal, if it shall think fit, to order that the verdict and judgment shall be set aside, and that a new trial shall be had.

Cross appeal.

6. It shall not, under any circumstances, be necessary for a respondent to give notice of motion by way of cross appeal, but if a respondent intends, upon the hearing of the appeal, to contend that the decision of the Court below should be varied, he shall, within the time specified in the next rule, or such time as may be prescribed by special order, give notice of such intention to any parties who may be affected by such contention. The omission to give such notice shall not diminish the powers conferred by the Act upon the Court of Appeal, but may, in the discretion of the Court, be ground for an adjournment of the appeal, or for a special order as to costs.

Where the respondents have given notice of their intention to apply to have the judgment varied, and both appeals are dismissed, the appellants will have to pay the costs except such as were occasioned by the notice. (*The Lauretta*, 4 P. D. 25.) The Court will not under the power contained in this rule entertain a cross appeal merely on a question of costs. (*Harris* v. *Aaron*, 4 Ch. D. 749.)

Notice by respondent.

7. Subject to any special order which may be made, notice by a respondent under the last preceding rule shall in the case of any appeal from a final judgment be an eight days' notice, and in the case of an appeal from an interlocutory order a two days' notice.

Entry of appeal.

8. The party appealing from a judgment or order shall produce to the proper officer of the Court of Appeal the judgment or order or an office copy thereof, and shall leave with him a copy of the notice of appeal to be filed, and such officer shall thereupon set down the appeal by entering the same in the

proper list of appeals, and it shall come on to be heard according to its order in such list, unless the Court of Appeal or a Judge thereof shall otherwise direct, but so as not to come into the paper for hearing before the day named in the notice of appeal.

Where an order is refused, the first part of this Rule has no application. (*Smith* v. *Grindley*, 3 Ch. D. 80.) Where defendants had given notice of appeal in due time, but had not entered it owing to the plaintiffs not having had the order drawn up, it was held that the plaintiffs could not take advantage of their own delay. (*Re Harker*, 10 Ch. D. 613.)

When the rule is not complied with, the respondent need not appear; but should make a substantive motion for his costs. (*Webb* v. *Mansel*, 2 Q. B. D. 117.)

The appeal must be entered before the day for which notice is given, or it will be treated as abandoned; unless that day happen to be in a vacation, when the office is closed; in which case it should be entered before the next day of the sitting of the Court. (*National Funds Co.*, 4 Ch. D. 305; *Shœtensack* v. *Price*, W. N. 1880, 69.)

A mistake of the solicitor is not of itself a reason for granting extension of time. (*Re Mansel*, 7 Ch. D. 711.)

9. The time for appealing from any order or decision made or given in the matter of the winding up of a company under the provisions of the Companies Act, 1862, or any Act amending the same, or any order or decision made in the matter of any bankruptcy, or in any other matter not being an action, shall be the same as the time limited for appeal from an interlocutory order under Rule 15. **Winding up.** **Bankruptcy.**

This rule applies to an order made under the Vendors and Purchasers Act, 1874. (*Blyth* v. *Young*, 13 Ch. D. 416.) In that case the respondent was deprived of his costs, having given the appellant reason to believe that he did not mean to insist upon the objection that the appeal was out of time.

As to the extension of time for appealing, by a person aggrieved by an adjudication in bankruptcy, see *Ex parte Tucker*, 12 Ch. D. 308. The time will be computed from the date of the order (*Ex parte Cochrane*, 9 Ch. D. 698; *Ex parte Ireland*, W. N. 1878, 176) to the service of the notice of appeal. (*Ex parte Viney*, 4 Ch. D. 794.)

The rule applies, not only to any order given in the matter of the winding up of the company, but to the winding-up order itself. (*Re National Funds Co.*, 4 Ch. D. 305.)

It applies to an order under the Trustee Relief Act. (*Re Baillie's, Trusts*, 4 Ch. D. 785.)

It does not apply to the Railways Act of 1868. (*The New River Co.* v. *M. Ry. Co.*, 36 L. T. 539.)

10. Where an *ex parte* application has been refused by the Court below, an application for a similar purpose may be made to the Court of Appeal *ex parte* within four days from the date of such refusal, or **Application ex parte.**

within such enlarged time as a Judge of the Court below or of the Appeal Court may allow.

Cause is shown against the rule in the Court of Appeal.

Evidence in Court of Appeal.

11. When any question of fact is involved in an appeal, the evidence taken in the Court below bearing on such question shall, subject to any special order, be brought before the Court of Appeal as follows:

(*a.*) As to any evidence taken by affidavit, by the production of printed copies of such of the affidavits as have been printed, and office copies of such of them as have not been printed.

(*b.*) As to any evidence given orally, by the production of a copy of the Judge's notes, or such other materials as the Court may deem expedient.

Affidavits, which are to be used on appeal, should be filed with the officer of the division from which the appeal is. (*Watts* v. *Watts*, 45 L. J. Ch. 658.)

Where the affidavits were very voluminous, the Court ordered the Clerk of the Rules to attend with them, and dispensed with the office copies to save expense. (*Sickles* v. *Norris*, 45 L. J. 148; *Crawford* v. *Hornsey Brick Co.*, 24 W. R. 422.)

In *Laming* v. *Gee*, 26 W. R. 217, it was contended that the Judge's notes alone could be referred to, and that the shorthand writer's notes could not be read; after some discussion, however, they were ultimately allowed to be read.

As to costs of shorthand-writer's notes, see R. S. C. (Costs), Order VII., *post*

Printing evidence.

12. Where evidence has not been printed in the Court below, the Court below or a Judge thereof, or the Court of Appeal or a Judge thereof, may order the whole or any part thereof to be printed for the purpose of the appeal. Any party printing evidence for the purpose of an appeal without such order shall bear the costs thereof, unless the Court of Appeal or a Judge thereof shall otherwise order.

Other materials.

13. If, upon the hearing of an appeal, a question arise as to the ruling or direction of the Judge to a jury or accessors, the Court shall have regard to verified notes or other evidence, and to such other materials as the Court may deem expedient.

Effect of interlocutory orders.

14. No interlocutory order or rule from which there has been no appeal shall operate so as to bar or prejudice the Court of Appeal from giving such decision upon the appeal as may seem just.

This rule was only intended to prevent the right of appeal from being interferred with, by the existence of an interlocutory order, which incidentally involves a decision of the point. (Jessel, M. R., in *White* v. *Witt*, 5 Ch. D. 590.)

Time for appeal. Interlocutory order.

15. No appeal from any interlocutory order shall, except by special leave of the Court of Appeal, be brought after the expiration of twenty-one days, and no other appeal shall, except by such leave, be brought after the expiration of one year. The said respective periods shall be calculated from the time at which the judgment or order is signed, entered or otherwise perfected, or, in the case of the refusal of an application, from the date of such refusal. Such deposit or other security for the costs to be occasioned by any appeal shall be made or given as may be directed under special circumstances by the Court of Appeal.

Final judgment.

Where part of a motion is refused, the time for appealing runs from the date of the refusal. (*Traill* v. *Jackson*, 4 Ch. D. 7; *Berdan* v. *Birmingham Small Arms Co.*, 7 Ch. D. 24; *Swindell* v. *Birmingham Syndicate*, 3 Ch. D. 127.) As to where the appellant has been unable to enter the appeal, in consequence of the order not having been drawn up, see *Re Harker*, 10 Ch. D. 613, *ante*, Rule 8.)

Special leave will not be given on an *ex parte* application. (*Evennett* v. *Lawrence*, 4 Ch. D. 139.)

It is not sufficient reason for enlarging the time for appealing, that the Court of Appeal has come to a different opinion on a doubtful point of law. (*Craig* v. *Phillips*, 7 Ch. D. 249.)

The Court will only under very special circumstances extend the time for appealing, after the time limited by the rules has elapsed. (*Ibid.*) "I give no opinion," says Thesiger, L. J., "whether, if there were a clear decision of a Court of Appeal over-ruling previous decisions, this discretion ought not, in some cases, to be exercised; but it is not enough that doubts have been thrown on the law as previously expressed."

Final, or interlocutory.

In determining whether a judgment is final or interlocutory, the attention must be directed to the form of the proceeding, not the nature of the contest. (*White* v. *Witt*, 5 Ch. D. 589; *Cummins* v. *Herron*, 4 Ch. D. 787; *Pheysey* v. *Pheysey*, 12 Ch. D. 305.) Hence an order to sign judgment upon a specially indorsed writ is not a final proceeding, as it requires to be perfected by the further step of signing the judgment. (*Standard Co.* v. *La Grange*, 3 C. P. D. 67.)

An order, overruling a demurrer, is not an interlocutory order as regards the time for appealing. (*Trowell* v. *Shenton*, 8 Ch. D. 321.)

An appeal, from a judgment of a Judge of the Chancery Division, on a question of fact, may be equivalent to an interlocutory order. (*Krehl* v. *Burrell*, 10 Ch. D. 420; *Lowe* v. *Lowe*, *Ibid.*, 432.)

If the order be final, though made on an interlocutory application, the time is one year. (*Att.-Gen.* v. *Great Eastern Ry.*, 48 L. J. Ch. 429.)

The dismissal of an action is a "refusal of an application" within the meaning of this rule; and the appeal must be brought within one year, from the date of such dismissal, and not from the

date of the entering of the order. (*International Financial Society* v. *City of Moscow Gas Company*, 7 Ch., D. 241.)

Chancery Chamber practice.

When a Judge has made an order in Chambers, and on a rehearing has affirmed that order in Court, an appeal lies to the Court of Appeal, within twenty-one days from the order in Court. In the Chancery Division, an application for a rehearing in Court must be made within twenty-one days of the order in Chambers, subject to the discretion of the Judge to enlarge the time. (*Dickson* v. *Harrison*, 26 W. R., 730.)

If the Judge does not desire to hear the case further argued in Court, the Court of Appeal on production of a certificate to that effect, or on being otherwise satisfied, will hear the appeal. (*Thomas* v. *Elsom*, 6 Ch. D., 346.)

Miscellaneous proceedings.

In *Ex parte Whitton, Re Greaves*, the Chief Judge held, that in the Court of Bankruptcy the period of twenty-one days must be reckoned from the date of the decision; no matter when the order was finally settled. (13 Ch. D. 881.)

All summonses, which finally settle the rights of parties, are heard by a full Court of Appeal of three judges. (Memorandum, 1 Ch. D. 41; *Pheysey* v. *Pheysey*, 12 Ch. D. 307.)

By a notice issued in January, 1877 (W. N. 1877, Pt. ii., p. 162), appeals from interlocutory orders in any of the following cases, will be set down for hearing in a separate list:—

(1) On applications for injunctions, prohibitions, writs of *ne exeat regno*, or *certiorari*, and for stop orders on securities or documents in Court.

(2) On applications for and relating to the appointment of receivers, managers, or official liquidators.

(3) On application for enlarging the time for redemption, for payment into Court, or for doing any other act, or for taking any proceedings.

(4) On applications relating to wards or infants, and the management of their property.

(5) On applications relating to all matters of contempt and to the execution of decrees, judgments, and orders.

(6) On applications relating to the discovery and inspection of documents.

(7) And, generally, on all applications relating merely to matters of practice or procedure.

The solicitor applying to set down any appeal in such list will be required to produce his notice of motion, and certify at the foot thereof the class to which it belongs.

To avoid expense, an appeal from the V.C. in Chambers may be allowed to the Court of Appeal direct. (*Northampton Waggon Co.* v. *Midland Waggon Co.*, 7 Ch. D. 500.)

As to the computation of time in bankruptcy matters, see further, *Ex parte Viney* and *Ex parte Saffery*, (5 Ch. D. 365,) Rule 9, *ante*.

Extension of time.

To have the time extended there must be no laches and a *bonâ fide* mistake. (*Highton* v. *Treherne*, 27 W. R. 245; *Ex parte Howe*, W. N. 1879, 6.) A mere misunderstanding of the rules is not sufficient (*International Society* v. *City of Moscow Gas Co.*, 7 Ch. D. 241), unless there be something peculiar in the circumstances, as where a valid notice had been given and withdrawn by mistake. (*Taylor's* case, 8 Ch. D. 643.)

Security may be on bond with sureties. (*Phosphate Sewage Co.* v. *Hartmont*, 2 Ch. D. 811; and see Order LV. Rule 3.)

An order under the Vendor and Purchaser Act, 1874, is one in

which the appeal must be brought within the twenty-one days (*Re Blyth and Young*, 28 W. R. 266), and the Court refused to extend the time on the ground stated in *McAndrew* v. *Barker*, 7 Ch. D., 701, that they had no discretionary power to deprive a litigant of any advantage given him by the General Orders, unless there has been on his part some conduct raising an equity against him. As the respondent had continued to correspond with the appellant on the subject of an appeal after the expiration of the twenty-one days, they gave no costs. (Sed confer *Collins* v. *The Vestry of Paddington*, W. N. 1880, 28.) As to extension of time where the Statute of Limitations has intervened, see Order VIII., Rule 1, *note*.

Security for costs.

It is not necessary to apply for leave to serve notice of motion that the appellant be directed to give security. (*Grills* v. *Dillon*, 2 Ch. D. 325.) The insolvency of the appellant is *primâ facie* a sufficient reason for ordering him to give security (*Hankin* v. *Turner*, 10 Ch. D. 372; *Wilson* v. *Smith*, 2 Ch. D. 67); moderate in amount (*The Constantine*, 4 P. D. 156); and it will be an additional reason if he is vexatiously and unreasonably prosecuting the appeal (*Usill* v. *Brearley*, 3 C. P. D. 206), or unnecessarily (*Waddell* v. *Blockey*, 10 Ch. D. 416).

It makes no difference which side appeals. (*Dence* v. *Mason*, W. N. 1879, 31.)

Where the appellant was a foreigner residing abroad and had no property in this country, he was ordered to give security under this rule. (*Grant* v. *Banque Franco-Egyptienne*, 2 C. P. D. 430.)

It is not the practice of the Court of Appeal to fix the time within which the appellant must give security. If it be not given within a reasonable time, the respondent may move to dismiss for want of prosecution. (*Polini* v. *Gray*, 11 Ch. D. 741.)

If he have only given the security the day before the hearing, he may be ordered to pay the costs of such motion. (*Ex parte Isaacs*, 10 Ch. D. 1.)

Where a Company appeals from a winding-up order, without joining a person responsible for costs, the Court of Appeal will entertain an application for security. (*Re Diamond Fuel Co.*, 28 W. R. 309.)

No stay, unless ordered.

16. An appeal shall not operate as a stay of execution or of proceedings under the decision appealed from, except so far as the Court appealed from, or any Judge thereof, or the Court of Appeal, may so order; and no intermediate act or proceeding shall be invalidated, except so far as the Court appealed from may direct.

If the Judge has dismissed the case, the application must be to the Court of Appeal. (*Wilson* v. *Church*, 11 Ch. D. 576.)

An application should be made to the Divisional Court, for a stay of proceedings pending an Appeal from it, to the Court of Appeal. (*Att.-General* v. *Swansea Co.*, 9 Ch. D. 46; and see *Goddard* v. *Thompson*, 26 W. R. 362.) And to the Court of Appeal pending an Appeal to the House of Lords. (*The Khedive*, 5 P. D. 1, and cases therein cited.) Stay of proceedings should not be included in a rule *nisi* for a new trial. (See Order XXXIX., Rule 5, *note*.) An application under this rule cannot be *ex parte*.

(*Republic of Peru* v. *Weguelin*, 24 W. R. 297; *Emma Co.* v. *Lewis*, 48 L. J. 504.)

Where the appellant, even if successful, would have been irreparably damaged, the Court stayed the execution, and advanced the Appeal. (*Adair* v. *Young*, 11 Ch. D. 136.)

In *Cooper* v. *Cooper*, 2 Ch. D. 492, the appellants were ordered to pay into Court the costs of the Court below, and to pay the respondents the costs of the application.

Appellate jurisdiction.

17. Wherever under these rules an application may be made either to the Court below or to the Court of Appeal, or to a Judge of the Court below or of the Court of Appeal, it shall be made in the first instance to the Court or Judge below.

See note to Rule 16, *ante*.

Motion.

18. Every application to a Judge of the Court of Appeal shall be by motion, and the provisions of Order LIII. shall apply thereto.

R. S. C. Dec. 1876. Appeals from Inferior Courts.

19. Rule 16 of the Rules of the Supreme Court, December 1875, is hereby repealed, and instead thereof the following provision shall take effect :—

Every Judge of the High Court of Justice for the time being shall be a Judge to hear and determine Appeals from inferior Courts, under Section 45 of the Supreme Court of Judicature Act, 1873. All such Appeals (except Admiralty Appeals from inferior Courts, which until further order shall be assigned as heretofore to the present Judge of the Admiralty Court), shall be entered in one list by the officers of the Crown Office of the Queen's Bench Division; and shall be heard by such Divisional Court of the Queen's Bench, Common Pleas, or Exchequer Division, as the Presidents of those Divisions shall from time to time direct.

Nothing in this order shall affect the validity of any rule or regulation heretofore issued with reference to such appeals by the Divisional Court formed under the said section.

Appeals from inferior Courts must be entered within the time given on the notice of appeal for the hearing, otherwise it will be taken to have been abandoned. (*Donovan* v. *Brown*, 4 Ex. D. 148, and see sec. 45 of the Jud. Act, 1873.)

ORDER LIX.

Effect of Non-compliance.

1. Non-compliance with any of these Rules shall not render the proceedings in any action void unless

the Court or a Judge shall so direct, but such proceedings may be set aside either wholly or in part as irregular, or amended, or otherwise dealt with in such manner and upon such terms as the Court or Judge shall think fit.

2. The Court or a Judge may at any time, and on such terms as to costs or otherwise as to the Court or Judge may seem just, amend any defect or error in any proceedings; and all such amendments may be made as may be necessary for the purpose of determining the real question or issue raised by or depending on the proceedings. Amendment. R. S. C. April, 1880.

ORDER LX.

Officers.

1. All officers who at the time of the commencement of the said Act shall be attached to the Court of Chancery shall be attached to the Chancery Division of the said High Court; and all officers who at the time of the commencement of the said Act shall be attached to the Court of Queen's Bench shall be attached to the Queen's Bench Division of the said High Court; and all officers who at the time of the commencement of the said Act shall be attached to the Court of Common Pleas shall be attached to the Common Pleas Division of the said High Court; and all officers who at the time of the commencement of the said Act shall be attached to the Court of Exchequer shall be attached to the Exchequer Division of the said High Court; and all officers who at the time of the commencement of the said Act shall be attached to the Court of Probate, the Court of Divorce, and the Court of Admiralty respectively shall be attached to the Probate, Divorce, and Admiralty Division of the said High Court.

2. Officers attached to any Division shall follow the appeals from the same division, and shall perform in the Court of Appeal analogous duties in reference to such appeals as the registrars and officers of the Court of Chancery usually performed as to re-hearings in the Court of Appeal in Chancery, and as the Masters and officers of the Courts of Queen's Bench, Common Pleas, and Exchequer respectively performed as to appeals heard by the Court of Exchequer Chamber.

R. S. C. Dec. 1879.

3. The office of Master of the Supreme Court of Judicature shall be deemed to be substituted for the several offices specified in the first part of the first schedule to the Supreme Court of Judicature (Officers) Act, 1879, and all enactments and documents referring to any of those offices, or to any of the persons holding them, shall, unless the context otherwise requires, be construed and have effect accordingly.

The offices here referred to are, The Record and Writ Clerk; Masters of the Q. B., C. P., and Ex. Divisions; Associates in the Q. B., C. P., and Ex. Divisions.

ORDER LX*a*.

Central Office.

R.S.C. Dec. 1879.

1. The central office shall, for the convenient despatch of business, be divided into the departments specified in the first column of the following scheme, and the business and staff of the office shall be distributed among the departments in accordance with that scheme.

Scheme.

Name of Department.	Business.	Staff.
1. Writ, appearance, and judgment . . .	The sealing and issue of writs of summons for the commencement of actions. The entry in the cause book of writs of summons, appearances, and judgments. The sealing and issue of notices for service under Order XVI., Rule 18. The receipt and filing of pleadings delivered on entry of judgment. The transaction of all business heretofore conducted in the Record and Writ Office, except such part thereof as is transacted in the Record Department.	The clerks employed in similar duties in the Record and Writ Office. Such of the clerks employed in the issue of writs and the entry of appearances and judgments in the Master's offices of the Queen's Bench, Common Pleas, and Exchequer Divisions as may be selected by the Masters for the purpose. And such of the officers employed under the registrars of the Probate, Divorce, and Admiralty Divisions as are selected for transfer to the central office.

Name of Department.	Business.	Staff.
2. Summons and Order . . .	The issue of summonses in the Queen's Bench, Common Pleas, and Exchequer Divisions, and the drawing up of all Orders made either in Court or in Chambers in those divisions.	The clerks employed in the Rule offices, and such of the other clerks in the Master's offices of the Queen's Bench, Common Pleas, and Exchequer Divisions as may be selected by the Masters for the purpose. And such additional clerks as may be appointed from time to time for the purpose.
3. Filing and Record . . .	The filing of all affidavits to be filed in the central office, and all depositions to be used in the Chancery Division, and such other documents as may from time to time be directed by the Masters to be filed, and the making and examination of office copies of documents filed in the department. The custody of all deeds and documents ordered to be left with the Masters. The business heretofore performed in the Report Office under the direction and control of the Clerks of Records and Writs.	The clerks and writers employed in similar duties in the Record and Writ Office with such additional clerks and such writers and messengers as may be from time to time found necessary.
4. Taxing . .	The taxation of costs in the Queen's Bench, Common Pleas, and Exchequer Divisions, except such costs as have heretofore been taxed in the Queen's Remembrancer's Office or the Crown Office.	Such of the clerks in the Master's offices of these three divisions as may be selected by the Masters for the purpose.

Name of Department.	Business.	Staff.
5. Enrolment .	The business heretofore performed in the Enrolment Office.	The clerks of the Enrolment Office.
6. Judgments .	The Registry of Judgments, execution, &c.	The clerks employed in similar duties under the registrar of judgments.
7. Bills of Sale .	The registry of bills of sale and other duties connected therewith.	The clerks employed in similar duties under the Masters of the Queen's Bench Division as registrars of bills of sale.
8. Married Women's acknowledgments . .	The registry of acknowledgments of deeds by married women.	The clerks employed in similar duties under the registrar of acknowledgments of deeds by married women.
9. Queen's Remembrancer .	The business heretofore performed in the Queen's Remembrancer's Office.	The clerks of the Queen's Remembrancer's Office.
10. Crown Office.	The business heretofore performed in the Crown Office.	The clerks of the Crown Office.
11. Associates .	The business heretofore performed in the Associates' Offices.	The clerks of the three Associates.

Practice. R.S.C. Dec. 1879.

2. It shall be the special duty of one of the Masters to be present at, and control the business of, the central office, and he shall give the necessary directions with respect to questions of practice and procedure relating to the business of the central office. The Masters shall select five of their number to discharge this duty in turn, according to a rota to be fixed by themselves.

Taxation of costs. R.S.C. Dec. 1879.

3. A sufficient number of Masters, not being less than three, shall, except in vacation, attend each day at the central office to tax costs. In vacation one

master shall so attend. The taxing masters shall be selected according to a rota to be fixed by the Masters.

Oaths. R.S.C. Dec. 1879.

4. Every Master, and every first and second-class clerk in the Filing and Record department, shall, by virtue of his office, have authority to take oaths and affidavits in the Supreme Court.

Seals of central office. R. S. C. April, 1880.

5. The official seals to be used in the central office shall be such as the Lord Chancellor from time to time directs.

All copies, certificates, and other documents appearing to be sealed with a seal of the central office shall be presumed to be office copies or certificates or other documents issued from the central office, and if duly stamped may be received in evidence, and no signature or other formality, except the sealing with a seal of the central office, shall be required for the authentication of any such copy, certificate, or other document.

Enrolment of deeds. R. S. C. April, 1880.

6. All deeds which by any statute or statutory rule are directed or permitted to be enrolled in any of the courts whose jurisdiction has been transferred to the High Court of Justice may be enrolled in the Enrolment Department of the central office.

Judgments, &c., not to be registered after 2 p.m. R. S. C. April. 1880.

7. The Registrar of Judgments shall not receive any memorandum of a judgment, execution, *lis pendens*, order, rule, annuity, Crown debt, or other incumbrance, or any memorandum of satisfaction relating to the same, for registration, after the hour of two in the afternoon.

Searches. R. S. C. May, 1880.

8*a*. Order LX*a*., Rule 8, is hereby annulled, and the following shall stand in lieu thereof:

The Clerk of Enrolments and each of the following registrars, namely—

The Registrar of Bills of Sale,

The Registrar of Certificates of Acknowledgments of Deeds by Married Women, and

The Registrar of Judgments,

shall, on a request in writing giving sufficient particulars, and on payment of the prescribed fee, cause a search to be made in the registers or indexes under his custody, and issue a certificate of the result of the search.

Registrars under Bills of Sale Act. R. S. C. April, 1880.

9. The Masters shall be the registrar for the purposes of the Bills of Sale Act, 1878, and any one of the Masters may perform all or any of the duties of the registrar.

Memorandum of satisfaction of bill of sale. R. S. C. April, 1880.

10. A memorandum of satisfaction may be ordered to be written upon a registered copy of a bill of sale on a consent to the satisfaction, signed by the person entitled to the benefit of the bill of sale, and verified by affidavit, being produced to the registrar, and filed in the central office.

Where this consent cannot be obtained the registrar may, on application by summons, and on hearing the person entitled to the benefit of the bill of sale, or on affidavit of service of the summons on that person, and in either case on proof to the satisfaction of the registrar that the debt (if any) for which the bill of sale was made has been satisfied or discharged, order a memorandum of satisfaction to be written upon a registered copy thereof.

Restrictions on removal of documents from central office. R. S. C. April, 1880.

11. No affidavit or record of the Court shall be taken out of the central office without the order of a Judge or Master, and no subpœna for the production of any such document shall be issued.

Forms. R. S. C. April, 1880.

12. Such variations shall be made in the forms prescribed by or under the Supreme Court of Judicature Acts, 1873, 1875, and 1877, as are requisite for giving effect to these rules.

The additional forms contained in the schedule hereto shall be used in or for the purposes of the central office, with such variations as circumstances require.

The Masters may from time to time prescribe the use in or for the purpose of the central office of such modified or additional forms as may be deemed expedient.

ORDER LXI.

Sittings and Vacations.

1. The sittings of the Court of Appeal and the sittings in London and Middlesex of the High Court of Justice shall be four in every year, viz., the Michaelmas sittings, the Hilary sittings, the Easter sittings, and the Trinity sittings.

The Michaelmas sittings shall commence on the 2nd of November and terminate on the 21st of December; the Hilary sittings shall commence on the 11th of January and terminate on the Wednesday before Easter; the Easter sittings shall commence on the Tuesday after Easter week and terminate on the Friday before Whitsunday.

The Trinity sittings shall commence on the Tuesday after Whitsun week and terminate on the 8th of August.

Vacations.

2. The vacations to be observed in the several courts and offices of the Supreme Court shall be four in every year, viz., the long vacation, the Christmas vacation, the Easter vacation, and the Whitsun vacation.

The long vacation shall commence on the 10th of August and terminate on the 24th of October. The Christmas vacation shall commence on the 24th of December and terminate on the 6th of January.

The Easter vacation shall commence on Good Friday and terminate on Easter Tuesday, and the Whitsun vacation shall commence on the Saturday before Whitsunday and shall terminate on the Tuesday after Whitsunday.

R. S. C. March, 1879.

2*a*. The Easter vacation in the present year shall, as regards the offices of the registrars and taxing masters of the Chancery Division, commence on Good Friday, and terminate on Saturday the 19th day of April.

3. The days of the commencement and termination of each sitting and vacation shall be included in such sitting and vacation respectively.

Close days for offices.

4. The several offices of the Supreme Court shall be open on every day of the year, except Sundays, Good Friday, Monday and Tuesday in Easter week, Whit Monday, Christmas Day, and the next following working day, and all days appointed by proclamation to be observed as days of general fast, humiliation, or thanksgiving.

R. S. C. Dec. 1875.

4*a*. The offices of each district registrar of the High Court of Justice shall be open on every day and hour in the year on which the offices of the registrar of the County Court of the place in which the district registry is situate are required to be kept open.

R. S. C. Feb. 1876.

4*b*. The offices of the Supreme Court (including the Judges' chambers) shall close on Saturdays at two o'clock.

Office hours. R. S. C. April, 1880.

4*c*. The office hours in the several offices of the Supreme Court, other than the Summons and Order, Crown Office, and Associates Departments of the central office, shall be from ten in the forenoon to four in the afternoon, except on Saturday and in vacation, when the offices shall close at two in the afternoon. In the excepted departments the hours shall be from eleven in the forenoon to five in the afternoon, except on Saturday and in vacation, when the hours shall be from eleven in the forenoon to three in the afternoon.

Whitsun vacation in Manchester district registry. R. S. C. May, 1880.

4*d*. The office of the district registry at Manchester shall not be open in any year on the five days next following Whit Monday.

Vacation Judges.

5. Two of the Judges of the High Court shall be selected at the commencement of each long vacation for the hearing in London or Middlesex during vacation of all such applications as may require to be immediately or promptly heard. Such two Judges shall act as vacation Judges for one year from their appointment. In the absence of arrangement between the Judges, the two vacation Judges shall be the two Judges last appointed (whether as Judges of the said High Court or of any Court whose jurisdiction is by the said Act transferred to the said High Court) who have not already served as vacation Judges of any such Court, and if there shall not be two Judges for the time being of the said High Court who shall not have so served, then the two vacation Judges shall be the Judge (if any) who has not so served, and the senior Judge or Judges who has or have so served once only according to seniority of appointment, whether in the said High Court or such other Court as aforesaid. The Lord Chancellor shall not be liable to serve as a vacation Judge.

Sittings in vacation.

6. The vacation Judges may sit either separately or together as a Divisional Court as occasion shall require, and may hear and dispose of all actions, matters, and other business to whichever division the same may be assigned. No order made by a vacation Judge shall be reversed or varied except by a Divisional Court or the Court of Appeal, or a Judge thereof, or the Judge who made the order. Any other Judge of the High Court may sit in vacation for any vacation Judge.

7. The vacation Judges of the High Court may dispose of all actions, matters, and other business of an urgent nature during any interval between the sittings of any division of the High Court to which such business may be assigned, although such interval may not be called or known as a vacation. Powers of vacation Judges.

On the 1st of March an urgent application was made to Fry, J., as vacation Judge (Bacon, V. C., having adjourned his sittings), who, after some hesitation thought his powers under this rule were sufficiently extensive, and made the order applied for. (*Wilson* v. *Watson*, 38 L. T. 380; and see also, as to the power of a Judge of Appeal in a similar instance, *Chapman* v. *Real Property Company*, 7 Ch. D. 732. Sec. 51 of the Act of 1873.)

8. The official referees shall sit at least from 10 a.m. to 4 p.m. on every day during the Michaelmas, Hilary, Easter, and Trinity sittings of the High Court of Justice, except on Saturdays, during such sittings, when they shall sit, at least, from 10 a.m. to 2 p.m.; but nothing in this rule shall prevent their sitting on any other days. R. S. C. Feb. 1876.

ORDER LXII.

Exceptions from the Rules.

1. Order LXII. is hereby annulled, and the following shall stand in lieu thereof. Proceedings excepted from rules. R. S. C. April, 1880.

Subject to the provisions of this order, nothing in these rules shall affect the procedure or practice in any of the following causes or matters :—

1. Criminal proceedings.
2. Proceedings on the Crown side of the Queen's Bench Division.
3. Proceedings on the Revenue side of the Exchequer Division.
4. Proceedings for Divorce or other Matrimonial Causes.

2. The following rules of the Supreme Court shall, as far as they are applicable, apply to all civil proceedings on the Crown side of the Queen's Bench Division, and to all proceedings on the Revenue side of the Exchequer Division, namely,— Application of certain rules to excepted proceedings. R. S. C. April, 1880.

Order LV. (Costs).
Order LVI. (Notices and papers, &c.)
Order LVII. (Time).
Order LVIII. (Appeals).

Special case. R. S. C. April, 1880.

3. The parties to any civil proceeding on the Crown side of the Queen's Bench Division, or to any proceeding on the Revenue side of the Exchequer Division, may, at any time after the proceeding is commenced, concur in stating any question or questions of law arising in the proceeding in the form of a special case for the opinion of the Court, and the provisions of Order XXXIV. shall, as far as they are applicable, apply to any special case so stated, as if it had been stated in an action.

Amendment. R. S. C. April, 1880.

4. The Court or a Judge may at any time, and on such terms as to costs or otherwise as to the Court or Judge may seem just, amend any defect or error in any civil proceeding on the Crown side of the Queen's Bench Division, or in any proceeding on the Revenue side of the Exchequer Division, and all such amendments may be made as may be necessary for the purpose of determining the real question or issue raised by or depending on the proceeding.

Non-compliance with rules. R. S. C. April, 1880.

5. Non-compliance with any rule of practice or procedure for the time being in force with respect to civil proceedings on the Crown side of the Queen's Bench Division, or to proceedings on the Revenue side of the Exchequer Division, shall not render the proceedings void unless the Court or a Judge so direct, but the proceedings may be set aside either wholly or in part as irregular, or amended, or otherwise dealt with in such manner and on such terms as the Court or Judge may think fit.

Mandamus, quo warranto, and prohibition to be deemed civil proceedings. R. S. C. April, 1880.

6. For the purposes of this Order, proceedings in Mandamus, Quo Warranto, and Prohibition shall be deemed civil proceedings.

ORDER LXIII.

Interpretation of Terms.

1. The provisions of the 100th section of the Act shall apply to these rules.

In the construction of these rules, unless there is anything in the subject or context repugnant thereto, the several words hereinafter mentioned or referred to shall have or include the meanings following :—

Person. "Person" shall include a body corporate or politic;

Probate action. "Probate actions" shall include actions and other

matters relating to the grant or recall of probate or of letters of administration other than common form business;

"Proper officer" shall, unless and until any rule to the contrary is made, mean an officer to be ascertained as follows:— Proper officer.

(*a.*) Where any duty to be discharged under the Act or these rules is a duty which has heretofore been discharged by any officer, such officer shall continue to be the proper officer to discharge the same;

(*b.*) Where any new duty is under the Act or these rules to be discharged, the proper officer to discharge the same shall be such officer, having previously discharged analogous duties, as may from time to time be directed to discharge the same, in the case of an officer of the Supreme Court, or the High Court of Justice, or the Court of Appeal, not attached to any division, by the Lord Chancellor, and in the case of an officer attached to any division, by the president of the division, and in the case of an officer attached to any Judge, by such Judge;

"The Act" and "the said Act" shall respectively mean the Supreme Court of Judicature Act, 1873, as amended by this Act.

2. In these rules the expression "Central Office" means the Central Office of the Supreme Court of Judicature; and the expression "Master" means a Master of the Supreme Court of Judicature. Interpretation of terms. R. S. C. April, 1880.

In the Supreme Court of Judicature (Officers) Act, 1879, and in Order LX., the expression "officer of the Supreme Court" shall mean any officer paid wholly or partly out of public money who is attached to the Supreme Court, the High Court of Justice, or the Court of Appeal, or to any Judge of any of those Courts, and is not an officer attached to the person of a Judge, and removable by him at pleasure.

The term "these rules," as used in the rules of the Supreme Court shall include any rules made in amendment of or addition to those rules.

ORDER LXIV.

SCHEME UNDER RAILWAY COMPANIES ACT, 1867.

Annulling of certain rules as to enrolment of scheme under 30 & 31 Vict. c. 127.

1. Rules 21 to 28, both inclusive, of the Order of Court made under the Railway Companies Act, 1867, are hereby annulled.

Mode of enrolment of scheme.

2. A scheme under the Railway Companies Act, 1867, shall be enrolled in the Enrolment Department of the central office.

Conditions of enrolment of scheme.

3. A scheme under that Act shall not be enrolled unless notice of the order confirming it has at least once in every entire week, reckoned from Sunday morning to Saturday evening, which elapses between the pronouncing of the order and the expiration of thirty days from the pronouncing thereof, been inserted in such two newspapers as shall have been appointed by the Judge for the insertion of advertisements under the order made pursuant to that Act, nor unless the newspapers containing those notices are produced to the proper officer when the scheme is presented for enrolment.

FORMS.

APPENDIX (A).

PART I.

Forms of Writs of Summons, &c.

No. 1.

187 . [*Here put the letter and number.*] Title in full.

In the High Court of Justice. Between A. B. Plaintiff,
Division. and
C. D. and E. F. Defendants.

Victoria, by the grace of God, *&c.*

To C. D. of in the county of and E. F. of

We command you, That within eight days after the service of this writ on you, inclusive of the day of such service, you do cause an appearance to be entered for you in the Division of Our High Court of Justice in an action at the suit of A. B.; and take notice, that in default of your so doing the plaintiff may proceed therein, and judgment may be given in your absence. Witness, &c.

Memorandum to be subscribed on the writ.

N.B.—This writ is to be served within (*twelve*) calendar months from the date thereof, or, if renewed, from the date of such renewal, including the day of such date, and not afterwards.

The defendant [*or defendants*] may appear hereto by entering an appearance [*or appearances*] either personally or by solicitor at the [ ] office at .

Indorsements to be made on the writ before issue thereof.

The plaintiff's claim is for, *&c.*

This writ was issued by E. F., of solicitor for the said plaintiff, who resides at , *or*, this writ was issued by the plaintiff in person, who resides at [*mention the city, town, or parish, and also the name of the street and number of the house of the plaintiff's residence, if any*].

Indorsement to be made on the writ after service thereof.

This writ was served by X. Y. on L. M. [the defendant *or* one of the defendants], on *Monday*, the day of , 18 .

(Signed) X. Y.

1A.

Specially Indorsed Writ, Order III., Rule 6.

R.S.C. April, 1880.

In the High Court of Justice.

Division. 18 No. .

Between

Plaintiff,

and

Defendant.

VICTORIA, by the grace of God of the United Kingdom of Great Britain and Ireland Queen, Defender of the Faith, to

of
in the of

We command you, that within eight days after the service of this writ on you, inclusive of the day of such service, you cause an appearance to be entered for you in an action at the suit of

And take notice, that in default of your so doing the plaintiff may proceed therein, and judgment may be given in your absence.

Witness, HUGH MACCALMONT, EARL CAIRNS, Lord High Chancellor of Great Britain, the day of in the year of Our Lord one thousand eight hundred and

N.B.—This writ is to be served within twelve calendar months from the date thereof, or, if renewed, within six calendar months from the date of the last renewal, including the day of such date, and not afterwards.

Appearance is to be entered at the Central Office, Royal Courts of Justice, London.

The plaintiff's claim is

The following are the particulars :—

And the sum of *l.*, [*or* such sum as may be allowed on taxation,] for costs. If the amount claimed is paid to the plaintiff or h solicitor or agent within four days from the service hereof, further proceedings will be stayed.

This writ was issued by
of
whose address for service is
agent for
of
solicitor for the said plaintiff who reside at

This writ was served by me at
on the defendan
on the day of , 18
Indorsed the day of , 18
(Signed)
(Address)

1B.

Writ for Issue from District Registry. R.S.C. April, 1880.

In the High Court of Justice.
Division. 18 No. .
(*Manchester*) *District Registry.*
Between
Plaintiff,
and
Defendant.

VICTORIA, by the Grace of God of the United Kingdom of Great Britain and Ireland Queen, Defender of the Faith, to

of
in the of

We command you, that within eight days after the service of this writ on you, inclusive of the day of such service, you cause an appearance to be entered for you in an action at the suit of

And take notice, that in default of your so doing the plaintiff may proceed therein, and judgment may be given in your absence.

Witness, HUGH MACCALMONT, EARL CAIRNS, Lord High Chancellor of Great Britain, the day of in the year of Our Lord One thousand eight hundred and

N.B.—This writ is to be served within twelve calendar months from the date thereof, or, if renewed, within six calendar months from the date of the last renewal, and not afterwards.

A defendant who resides or carries on business within the above-named district must enter appearance at the office of the registrar of that district.*

A defendant who neither resides nor carries on business within the said district may enter appearance either at the office of the said registrar or at the Central Office, Royal Courts of Justice, London.

* Insert address of office.

The plaintiff's claim is

This writ was issued by

* This address must be within the district.

whose address for service* is
agent for
of
solicitor for the said plaintiff who reside at

This writ was served by me at

on the defendant
on day the day of 18 .
Indorsed the day of 18 .
(Signed)
(Address)

1c.

R.S.C. April, 1880. *Specially Indorsed Writ for issue from District Registry.*

In the High Court of Justice.
Division. 18 No.

(*Manchester*) *District Registry.*

Between Plaintiff,

and

Defendant.

Victoria, by the Grace of God of the United Kingdom of Great Britain and Ireland Queen, Defender of the Faith, to

of
in the of

We command you, that within eight days after the service of this writ on you, inclusive of the day of such service, you cause an appearance to be entered for you in an action at the suit of

And take notice, that in default of your so doing the plaintiff may proceed therein, and judgment may be given in your absence.

Witness Hugh MacCalmont, Earl Cairns Lord High Chancellor of Great Britain, the day of in the year of Our Lord One thousand eight hundred and

N.B.—This writ is to be served within twelve calendar months from the date thereof, or if renewed, within six calendar months from the date of the last renewal, including the day of such date and not afterwards.

A defendant who resides or carries on business within the above-named district must enter appearance at the office of the registrar of that district.*

* Insert address of office.

A defendant who neither resides nor carries on business within the said district may enter appearance either at the office of the said registrar or at the Central Office, Royal Courts of Justice, London.

The plaintiff's claim is

The following are the particulars:—

And the sum of £ , [*or* such sum as may be allowed on taxation,] for costs. If the amount claimed is paid to the plaintiff or h solicitor or agent within four days from the service hereof, further proceedings will be stayed.

This writ was issued by
of
whose address for service* is
agent for
of
solicitor for the said plaintiff , who reside at

* This address must be within the district.

This writ was served by me at

on the defendant
on the day of 18 .
Indorsed the day of 18 .
(Signed)
(Address)

No. 2.

Writ for Service out of the Jurisdiction, or where Notice in lieu of Service is to be given out of the Jurisdiction.

187 . [*Here put the letter and number.*]
In the High Court of Justice. Between A. B. Plaintiff,
Division. and
C. D. and E. F. Defendants.

VICTORIA, by the Grace of God, &c.

To C. D. of

We command you, C. D., That within [*here insert the number of days directed by the Court or Judge ordering the service or notice*] after the service of this writ [*or notice of this writ, as the case may be*] on you, inclusive of the day of such service, you do cause an appearance to be entered for you in the Division of our High Court of Justice in an action at the suit of A. B.; and take notice, that in default of your so doing the plaintiff may proceed therein, and judgment may be given in your absence.

Witness, &c.

R.S.C. June, 1876.

Memoranda and Indorsements as in Form No. 1.

Indorsement to be made on the writ before the issue thereof.

N.B.—*This writ is to be used where the defendant or all the defendants or one or more defendant or defendants is or are out of the jurisdiction.*

See Order II., Rule 3*a*, *ante*.

2*a*.

R.S.C. April, 1880. ***Specially indorsed writ for Service out of the Jurisdiction.***

In the High Court of Justice.

Division. 18 No.

Between

Plaintiff,

and

Defendant.

VICTORIA, by the Grace of God of the United Kingdom of Great Britain and Ireland Queen, Defender of the Faith, to

of
in the of

* Insert No. of days directed by Court or Judge.

† If notice of the writ is to be served, insert here "of notice."

We command you, that within * days after service † of this writ on you, inclusive of the day of such service, you cause an appearance to be entered for you in an action at the suit of

And take notice, that in default of your so doing the plaintiff may proceed therein, and judgment may be given in your absence.

Witness, HUGH MACCALMONT, EARL CAIRNS, Lord High Chancellor of Great Britain, the day of in the year of our Lord, one thousand eight hundred and

N.B.—This writ is to be served within twelve calendar months from the date thereof, or if renewed, within six calendar months from the date of the last renewal, including the day of such date, and not afterwards.

Appearance is to be entered at the Central Office, Royal Courts of Justice, London.

The plaintiff's claim is

The following are the particulars :—

* Insert No. of days limited for appearance.

† If notice to be served, insert here, "of notice."

And £ [*or* such sum as may be allowed on taxation] for costs. If the amount claimed is paid to the plaintiff or h solicitor or agent within* days from service † hereof, further proceedings will be stayed.

This writ was issued by
of

whose address for service is
agent for
of
solicitor for the said plaintiff , who reside at

This writ [*or* notice of this writ] was served by me at

on the defendant
on the day of 18 .
Indorsed the day of 18 .
(Signed)
(Address)

N.B.—This writ is to be used where the defendant, or all the defendants, or one or more defendant or defendants, is or are out of the jurisdiction. When the defendant to be served is not a British subject, and is not in British dominions, notice of the writ and not the writ itself is to be served upon him.

2B.

Writ from District Registry for Service out of the Jurisdiction.

R.S.C. April, 1880.

In the High Court of Justice.
Division. 18 No.
(*Manchester*) *District Registry.*

Between

Plaintiff,

and

Defendant.

VICTORIA, by the Grace of God of the United Kingdom of Great Britain and Ireland Queen, Defender of the Faith, to

of

We command you, that within* days after service of† this writ on you, inclusive of the day of such service, you cause an appearance to be entered for you in an action at the suit of

And take notice, that in default of your so doing the plaintiff may proceed therein, and judgment may be given in your absence.

Witness, HUGH MACCALMONT, EARL CAIRNS, Lord High Chancellor of Great Britain, the day of in the year of Our Lord One thousand eight hundred and

N.B.—This writ is to be served within twelve calendar months from the date thereof, or if renewed, within six calendar months from the date of the last renewal, including the day of such date, and not afterwards.

* Insert No. of days directed by Court or Judge.

† If notice of writ is to be served, insert here "notice of."

A defendant who resides or carries on business within the above-named district, must enter appearance at the office of the registrar of that district.*

* Insert address of office.

A defendant who neither resides nor carries on business within the said district may enter appearance either at the office of the said registrar or at the Central Office, Royal Courts of Justice, London.

The plaintiff's claim is

This writ was issued by
of
whose address for service* is
agent for
solicitor for the said plaintiff who reside at

* This address must be within the district.

This writ [*or* notice of this writ] was served by me at
on the defendant
on the day of 18 .
Indorsed the day of 18 .
(Signed)
(Address)

N.B.—This writ is to be used where the defendant, or all the defendants, or one or more defendant or defendants, is or are out of the jurisdiction. Where the defendant to be served is not a British subject, and is not in British dominions, notice of the writ and not the writ itself is to be served upon him.

2c.

Specially Indorsed Writ from District Registry for Service out of the Jurisdiction.

In the High Court of Justice.
Division 18 No.
(*Manchester*) *District Registry.*
Between
Plaintiff,
and
Defendants.

Victoria, by the Grace of God of the United Kingdom of Great Britain and Ireland Queen, Defender of the Faith, to

of
in the of

We command you, that within* days after service of† this writ on you, inclusive of the day of such service, you cause an appearance to be entered for you in an action at the suit of

* Insert No. of days directed by Court or Judge.

And take notice, that in default of your so doing the plaintiff may proceed therein, and judgment may be given in your absence.

† If notice of writ is to be served, insert here "notice of."

Witness HUGH MACCALMONT, EARL CAIRNS, Lord High Chancellor of Great Britain, the day of in the year of Our Lord One thousand eight hundred and

N.B.—This writ is to be served within twelve calendar months from the date thereof, or if renewed, within six calendar months from the date of the last renewal, including the day of such date and not afterwards.

A defendant who resides or carries on business within the above-named district must enter appearance at the office of the registrar of that district.*

* Insert address of office.

A defendant who neither resides nor carries on business within the said district may enter appearance either at the office of the said registrar or at the Central Office, Royal Courts of Justice, London.

The plaintiff's claim is

The following are the particulars:—

and £ [*or* such sum as may be allowed on taxation] for costs. If the amount claimed be paid to the plaintiff or h solicitor or agent within* days from service† hereof, further proceedings will be stayed.

* Insert No. of days limited for appearance.

† If notice of writ is to be served, insert here, "of notice."

This writ was issued by
of
whose address for service* is
agent for
of
solicitor for the said plaintiff , who reside at

* This address must be within the district.

This writ [*or* notice of this writ] was served by me at
on the defendant
on the day of 18 .
Indorsed the day of 18 .
(Signed)
(Address)

N.B.—This writ is to be used where the defendant or all the defendants, or one or more defendant or defendants, is or are out of the jurisdiction. Where the person to be served is not a British subject, and is not in British dominions, notice of the writ and not the writ itself is to be served upon him.

No. 3.

Notice of Writ in lieu of Service to be given out of the Jurisdiction.

187 . [*Here put the letter and number.*]

Between A.B. Plaintiff,

and

C.D., E.F., and G.H. Defendants.

To G.H., of

Take notice, that A.B., of has commenced an action against you, G.H., in the Division of Her Majesty's High Court of Justice in England, by writ of that Court, dated the day of , A.D. 18 ; which writ is indorsed as follows [*copy in full the indorsements*], and you are required within days after the receipt of this notice, inclusive of the day of such receipt, to defend the said action, by causing an appearance to be entered for you in the said Court to the said action; and in default of your so doing, the said A.B. may proceed therein, and judgment may be given in your absence.

R.S.C. June, 1876.

You may appear to the said writ by entering an appearance personally or by your solicitor at the [ ] office at

(Signed) A.B. of &c.

or

X.Y. of &c.

Solicitor for A.B.

In the High Court of Justice.

Division.

See Order II., Rule 3*a*, *ante*.

3A.

R.S.C. April, 1880.

Notice of Writ in lieu of Service to be given out of the Jurisdiction.

(District Registry Form.)

In the High Court of Justice.

Division. 18 No.

(*Manchester*) *District Registry.*

Between

Plaintiff,

and

Defendant.

To

of

Take notice, that of
ha commenced an action against you
in the Division of Her Majesty's High Court of Justice in England, by writ of that Court, dated the day of 18 , which writ is indorsed as follows:—

And you are hereby required within days after the receipt of this notice, inclusive of the day of such receipt, to defend this action by causing an appearance to be entered for you thereto, and in default of your so doing the said may proceed therein, and judgment may be given in your absence.

If you reside or carry on business within the above-named district, appearance is to be entered at the office of the registrar for that district*.

If you do not either reside or carry on business within that district, appearance is to be entered either at the office of the said registrar or at the Central Office, Royal Courts of Justice, London.

* Insert address of office.

(Signed)

This notice was served by me at
on the defendant
on the day of 18 .
Indorsed the day of 18 .
(Signed)
(Address)

N.B.—This notice is to be used where the person to be served is not a British subject, and is not in British Dominions.

4A.

Writ of Summons in Admiralty Action in rem. R.S.C. Dec. 1875.

187 [*Here put the letter and number.*]

In the High Court of Justice,
Admiralty Division.

Between A.B., Plaintiff,
and
The owners of the
VICTORIA, by the Grace of God, &c.

To the owners and parties interested in the ship or vessel of the port of [*or* cargo, *&c.*, *as the case may be*].

We command you, that within eight days after the service of this writ, inclusive of the day of such service, you do cause an appearance to be entered for you in the Admiralty Division of our High Court of Justice in an action of the suit of A.B.;

and take notice that in default of your so doing the plaintiff may proceed therein, and judgment may be given in your absence.

Witness, HUGH MACCALMONT, BARON CAIRNS, Lord High Chancellor of Great Britain, this day of 18 .

Memorandum to be subscribed on the Writ.

N.B.—This writ is to be served within (*twelve*) calendar months from the date thereof, or, if renewed, from the date of such renewal, including the day of such date, and not afterwards.

The defendant (*or* defendants) may appear hereto by entering an appearance (*or* appearances) either personally or by solicitor at the [ ] office at

Indorsements to be made on the Writ before Issue thereof.

The plaintiff's claim is for, &c.

This writ was issued by E.F., of , solicitor for the said plaintiff, who resides at , *or*, this writ was issued by the plaintiff in person, who resides at [*mention the city, town, or parish, and also the name of the street and number of the house of the plaintiff's residence, if any.*]

Indorsement to be made on the Writ after service thereof.

This writ was served by X.Y. [*here state the mode in which the service was effected, whether on the owner, or on the ship, cargo, or freight, according to Order IX., Rules* 10, 11, *and* 12, *as the case may be*] on the day of 18 .

Signed,
X.Y.

See Order II., Rule 7*a*, *ante*.

4B.

R.S.C. Feb. 1876.

Warrant of Arrest in Admiralty Action in rem.

187 [*Here put the letter and number.*]

In the High Court of Justice,
Admiralty Division.

Between A.B., Plaintiff,
and
the Owners of the
VICTORIA, &c.

To the Marshal of the Admiralty Division of Our High Court of Justice, and to all and singular his substitutes [*or* To the Collector or Collectors of Customs at the Port of].

We hereby command you to arrest the ship or vessel of the port of [*and the cargo and freight, &c., as the case may be*], and to keep the same under safe arrest, until you shall receive further orders from us.

Witness, Hugh MacCalmont, Baron Cairns, Lord High Chancellor of Great Britain, this day of 18 .

See Order V., Rule 11*a*, *ante*.

4BB.

Writ in Admiralty Actions for Issue from District Registry.

R.S.C. April 1880.

In the High Court of Justice.

Division. 18 No. .

(*Manchester*) *District Registry.*

Between

Plaintiff,

and

The Owners of the

Defendants.

Victoria, by the Grace of God of the United Kingdom of Great Britain and Ireland Queen, Defender of the Faith, to the owners and parties interested in the ship or vessel

of the port of

and

We command you, that within eight days after the service of this writ, inclusive of the day of such service, you cause an appearance to be entered for you in an action at the suit of

And take notice, that in default of your so doing the plaintiff may proceed therein, and judgment may be given in your absence.

Witness, Hugh MacCalmont, Earl Cairns, Lord High Chancellor of Great Britain, this day of in the year of Our Lord one thousand eight hundred and

N.B.—This writ is to be served within twelve calendar months from the date thereof, or if renewed, within six calendar months from the date of the last renewal, including the day of such date, and not afterwards.

A defendant who resides or carries on business within the above-named district must enter appearance at the office of the registrar of that district.*

A defendant who neither resides nor carries on business within the said district may enter appearance either at the office of the said registrar or at the Central Office, Royal Courts of Justice, London.

* Insert address of office.

The plaintiff's claim is for

This writ was issued by
of
whose address for service* is
agent for
of
solicitor for the said plaintiff who reside at

* This address must be within the district.

* State mode of service. This writ was served by me*
on the day of 18 .
Indorsed the day of 18 .
(Signed)
(Address)

No. 5.

Form of Memorandum for Renewed Writ.

In the High Court of Justice.
Division.

Between A. B., Plaintiff,
and
C. D., Defendant.

Seal renewed writ of summons in this action indorsed as follows:—

[*Copy original writ and the indorsements.*]

No. 6.

Memorandum of Appearance.

187 . [*Here put the letter and number.*]

High Court of Justice.

[*Chancery*] Division.

A. B. *v.* C. D., and others.

Enter an appearance for
in this action.

Dated this day of

X. Y.,
Solicitor for the defendant.

The place of business of X. Y. is
His address for service is

or [C. D.,
Defendant in person.

The address of C. D. is
His address for service is .]
The said defendant [requires, *or*, does not require] a statement of complaint to be filed and delivered.

No. 7.

[*Here put the letter and number.*]
In the High Court of Justice.
Queen's Bench [*or* Chancery, C.P., *or*, &c.] Division.
Between A. B., plaintiff,
and
C. D., and E. F., Defendants.

The defendant C. D. limits his defence to part only of the property mentioned in the writ in this action, that is to say, to the close called "the Big field."

Yours, &c.,
G. H.,
Solicitor for the said defendant C. D.

Mr. X. Y., plaintiff's solicitor.

PART II.

Section I.

General Indorsements.

In matters assigned by the 34th Section of the Act to the Chancery Division.

1. *Creditor to administer Estate.*

The plaintiff's claim is as a creditor of X. Y., of deceased, to have the [real and] personal estate of the said X. Y. administered. The defendant C. D. is sued as the administrator of the said X. Y. [and the defendants E. F. and G. H. as his co-heirs-at-law.]

2. *Legatee to administer Estate.*

The plaintiff's claim is as a legatee under the will dated the day 18 , of X. Y., deceased to have the [real and] personal estate of the said X. Y. administered. The defendant C. D. is sued as the executor of the said X. Y. [and the defendants E. F. and G. H. as his devisees.]

3. *Partnership.*

The plaintiff's claim is to have an account taken of the partnership dealings between the plaintiff and defendant [under articles of partnership dated the day of], and to have the affairs of the partnership wound up.

4. *By Mortgagee.*

The plaintiff's claim is to have an account taken of what is due to him for principal, interest, and costs on a mortgage dated the day of made between [*or by deposit of title deeds*], and that the mortgage may be enforced by foreclosure or sale.

5. *By Mortgagor.*

The plaintiff's claim is to have an account taken of what, if anything, is due on a mortgage dated and made between [*parties*], and to redeem the property comprised therein.

6. *Raising Portions.*

The plaintiff's claim is that the sum of *l.*, which by an indenture of settlement dated , was provided for the portions of the younger children of may be raised.

7. *Execution of Trusts.*

The plaintiff's claim is to have the trusts of an indenture dated and made between , carried into execution.

8. *Cancellation or Rectification.*

The plaintiff's claim is to have a deed dated and made between [*parties*], set aside or rectified.

9. *Specific Performance.*

The plaintiff's claim is for specific performance of an agreement dated the day of , for the sale by the plaintiff to the defendant of certain [*freehold*] hereditaments at

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Section II.

Money Claims where no Special Indorsement under Order III., Rule 6.

Goods sold. The plaintiff's claim is *l.* for the price of goods sold.

[*This Form shall suffice whether the claim be in respect of goods sold and delivered, or of goods bargained and sold.*]

Money lent. The plaintiff's claim is *l.* for money lent (*and interest*

Several demands. The plaintiff's claim is *l.*, whereof *l.* is for the price of goods sold, and *l.* for money lent, and *l.* for interest.

The plaintiff's claim is	*l.* for arrears of rent.	Rent.
The plaintiff's claim is	*l.* for arrears of salary as a clerk [*or as the case may be*].	Salary, &c.
The plaintiff's claim is	*l.* for interest upon money lent.	Interest.
The plaintiff's claim is	*l.* for a general average contribution.	General average.
The plaintiff's claim is	*l.* for freight and demurrage.	Freight, &c.,
The plaintiff's claim is	*l.* for lighterage.	
The plaintiff's claim is	*l.* for market tolls and stallage.	Tolls.
The plaintiff's claim is	*l.* for penalties under the Statute. [. . . .].	Penalties.
The plaintiff's claim is	*l.* for money deposited with the defendant as a banker.	Bankers' balance.
The plaintiff's claim is	*l.* for fees for work done [*and l. money expended*] as a solicitor.	Fees, &c. as solicitors.
The plaintiff's claim is	*l.* for commission earned as [*state character as auctioneer, cotton broker, &c.*]	Commission.
The plaintiff's claim is	*l.* for medical attendance.	Medical attendance, &c.
The plaintiff's claim is	*l.* for a return of premiums paid upon policies of insurance.	Return of premium.
The plaintiff's claim is	*l.* for the warehousing of goods.	Warehouse rent.
The plaintiff's claim is	*l.* for the carriage of goods by railway.	Carriage of goods.
The plaintiff's claim is	*l.* for the use and occupation of a house.	Use and occupation of houses.
The plaintiff's claim is	*l.* for the hire of [*furniture*].	Hire of goods.
The plaintiff's claim is	*l.* for work done as a surveyor.	Work done.
The plaintiff's claim is	*l.* for board and lodging.	Board and lodging.
The plaintiff's claim is	*l.* for the board, lodging, and tuition of X. Y.	Schooling.
The plaintiff's claim is	*l.* for money received by the defendant as solicitor [*or factor, or collector, or, &c.*] of the plaintiff.	Money received.
The plaintiff's claim is	*l.* for fees received by the defendant under colour of the office of	Fees of office.
The plaintiff's claim is	*l.* for a return of money overcharged for the carriage of goods by railway.	Money overpaid.
The plaintiff's claim is	*l.* for a return of fees overcharged by the defendant as	
The plaintiff's claim is	*l.* for a return of money deposited with the defendant as stakeholder.	Return of money by stakeholder.
The plaintiff's claim is	*l.* for money entrusted to the defendant as stakeholder, and become payable to plaintiff.	Money won from stakeholder.
The plaintiff's claim is	*l.* for a return of money entrusted to the defendant as agent of the plaintiff.	Money entrusted to agent.
The plaintiff's claim is	*l.* for a return of money obtained from the plaintiff by fraud.	Money obtained by fraud.

Money paid by mistake. The plaintiff's claim is £. for a return of money paid to the defendant by mistake.

Money paid for consideration which has failed. The plaintiff's claim is £. for a return of money paid to the defendant for [*work to be done, left undone, or, a bill to be taken up, not taken up, or, &c.*]

The plaintiff's claim is £. for a return of money paid as a deposit upon shares to be allotted.

Money paid by surety for defendant. The plaintiff's claim is £. for money paid for the defendant as his surety.

Rent paid. The plaintiff's claim is £. for money paid for rent due by the defendant.

Money paid on accommodation bill. The plaintiff's claim is £. upon a bill of exchange accepted [*or indorsed*] for the defendant's accommodation.

Contribution by surety. The plaintiff's claim is £. for a contribution in respect of money paid by the plaintiff as surety.

By co-debtor. The plaintiff's claim is £. for a contribution in respect of joint debt of the plaintiff and the defendant, paid by the plaintiff.

Money paid for calls. The plaintiff's claim is £. for money paid for calls upon shares, against which the defendant was bound to indemnify the plaintiff.

Money payable under award. The plaintiff's claim is £. for money payable under an award.

Life policy. The plaintiff's claim is £. upon a policy of insurance upon the life of X. Y., deceased.

Money bond. The plaintiff's claim is £. upon a bond to secure payment of 1,000*l.*, and interest.

Foreign judgment. The plaintiff's claim is £. upon a judgment of the Court, in the Empire of Russia.

Bills of exchange, &c. The plaintiff's claim is £. upon a cheque drawn by the defendant.

The plaintiff's claim is £. upon a bill of exchange accepted [*or drawn or indorsed*] by the defendant.

The plaintiff's claim is £. upon a promissory note made [*or indorsed*] by the defendant.

The plaintiff's claim is £. against the defendant A. B. as acceptor, and against the defendant C. D. as drawer [*or indorser*] of a bill of exchange.

Surety. The plaintiff's claim is £. against the defendant as surety for the price of goods sold.

The plaintiff's claim is £. against the defendant A. B. as principal, and against the defendant C. D. as surety, for the price of goods sold [*or arrears of rent, or for money lent, or for money received by the defendant A. B. as traveller for the plaintiffs, or, &c.*]

***Del credere* agent.** The plaintiff's claim is £. against the defendant as a *de credere* agent for the price of goods sold [*or as losses under a policy*].

The plaintiff's claim is *l.* for calls upon shares. Calls.

The plaintiff's claim is *l.* for crops, tillage, manure [*or as the case may be*] left by the defendant as out-going tenant of a farm. Waygoing crops, &c.

Section III.

Indorsement for Costs, &c. [*add to the above Forms*].

And *l.* for costs; and if the amount claimed be paid to the plaintiff or his solicitor within four days [*or if the writ is to be served out of the jurisdiction, or notice in lieu of service allowed, insert the time for appearance limited by the order*] from the service hereof, further proceedings will be stayed.

Section IV.

Damages and other Claims.

The plaintiff's claim is for damages for breach of a contract to employ the plaintiff as traveller. Agent, &c.

The plaintiff's claim is for damages for wrongful dismissal from the defendant's employment as traveller [*and* *l.* *for arrears of wages*].

The plaintiff's claim is for damages for the defendant's wrongfully quitting the plaintiff's employment as manager.

The plaintiff's claim is for damages for breach of duty as factor [*or, &c.*] of the plaintiff [*and* *l.* *for money received as factor, &c.*]

The plaintiff's claim is for damages for breach of the terms of a deed of apprenticeship of X. Y. to the defendant [*or plaintiff*]. Apprentices.

The plaintiff's claim is for damages for non-compliance with the award of X. Y. Arbitration.

The plaintiff's claim is for damages for assault [*and false imprisonment, and for malicious prosecution*]. Assault, &c.

The plaintiff's claim is for damages for assault and false imprisonment of the plaintiff C. D. By husband and w fe.

The plaintiff's claim is for damages for assault by the defendant C. D. Against husband and wife.

The plaintiff's claim is for damages for injury by the defendant's negligence as solicitor of the plaintiff. Solicitor.

The plaintiff's claim is for damages for negligence in the custody of goods [*and for wrongfully detaining the same*]. Bailment.

The plaintiff's claim is for damages for negligence in the keeping of goods pawned [*and for wrongfully detaining the same*]. Pledge.

The plaintiff's claim is for damages for negligence in the cus- Hire.

tody of furniture lent on hire [*or a carriage lent*], [*and for wrongfully, &c.*]

Banker. The plaintiff's claim is for damages for wrongfully neglecting [*or refusing*] to pay the plaintiff's cheque.

Bill. The plaintiff's claim is for damages for breach of a contract to accept the plaintiff's drafts.

Bond. The plaintiff's claim is upon a bond conditioned not to carry on the trade of a

Carrier. The plaintiff's claim is for damages for refusing to carry the plaintiff's goods by railway.

The plaintiff's claim is for damages for refusing to carry the plaintiff by railway.

The plaintiff's claim is for damages for breach of duty in and about the carriage and delivery of coals by railway.

The plaintiff's claim is for damages for breach of duty in and about the carriage and delivery of machinery by sea.

Charter-party. The plaintiff's claim is for damages for breach of charter-party of ship [*Mary*].

Claim for return of goods; damages. The plaintiff's claim is for return of household furniture, or, &c., or their value, and for damages for detaining the same.

Damages for depriving of goods. The plaintiff's claim is for wrongfully depriving plaintiff of goods, household furniture, &c.

Defamation. The plaintiff's claim is for damages for libel.

The plaintiff's claim is for damages for slander.

Distress. Replevin. The plaintiff's claim is in replevin for goods wrongfully distrained.

Wrongful distress. The plaintiff's claim is for damages for improperly distraining.

[*This Form shall be sufficient whether the distress complained of be wrongful or excessive, or irregular, and whether the claim be for damages only, or for double value.*]

Ejectment. The plaintiff's claim is to recover possession of a house, No. , in street, or of a farm called Blackacre, situate in the parish of in the county of

To establish title and recover rents. The plaintiff's claim is to establish his title to [*here describe property*], and to recover the rents thereof.

[*The two previous Forms may be combined.*]

Dower. The plaintiff's claim is for dower.

Fishery. The plaintiff's claim is for damages for infringement of the plaintiff's right of fishing.

Fraud. The plaintiff's claim is for damages for fraudulent misrepresentation on the sale of a horse [*or a business, or shares, or, &c.*]

The plaintiff's claim is for damages for fraudulent misrepresentation of the credit of A. B.

Guarantee. The plaintiff's claim is for damages for breach of a contract of guarantee for A. B.

The plaintiff's claim is for damages for breach of a contract to indemnify the plaintiff as the defendant's agent to distrain.

The plaintiff's claim is for a loss under a policy upon the ship "Royal Charter," and freight or cargo [*or for return of premiums.*] Insurance.

[*This Form shall be sufficient whether the loss claimed be total or partial.*]

The plaintiff's claim is for a loss under a policy of fire insurance upon house and furniture. Fire insurance.

The plaintiff's claim is for damages for breach of a contract to insure a house.

The plaintiff's claim is for damages for breach of contract to keep a house in repair. Landlord and tenant.

The plaintiff's claim is for damages for breaches of covenants contained in a lease of a farm.

The plaintiff's claim is for damages for injury to the plaintiff from the defendant's negligence as a medical man. Medical man.

The plaintiff's claim is for damages for injury by the defendant's dog. Mischievous animal.

The plaintiff's claim is for damages for injury to the plaintiff [*or, if by husband and wife, to the plaintiff*, C.D.] by the negligent driving of the defendant or his servants. Negligence.

The plaintiff's claim is for damages for injury to the plaintiff while a passanger on the defendant's railway by the negligence of the defendant's servants.

The plaintiff's claim is for damages for injury to the plaintiff at the defendant's railway station, from the defective condition of the station.

The plaintiff's claim is as executor of A. B. deceased, for damages for the death of the said A. B., from injuries received while a passenger on the defendant's railway, by the negligence of the defendant's servants. Lord Campbell's Act.

The plaintiff's claim is for damages for breach of promise of marriage. Promise of marriage.

The plaintiff's claim is in quare impedit for Quare impedit.

The plaintiff's claim is for damages for the seduction of the plaintiff's daughter. Seduction.

The plaintiff's claim is for damages for breach of contract to accept and pay for goods. Sale of goods,

The plaintiff's claim is for damages for non-delivery [*or* short delivery, *or* defective quality, *or other breach of contract of sale*] of cotton [*or, &c.*]

The plaintiff's claim is for damages for breach of warranty of a horse.

The plaintiff's claim is for damages for breach of a contract to sell [*or purchase*] land. Sale of land.

The plaintiff's claim is for damages for breach of a contract to let [*or take*] a house.

The plaintiff's claim is for damages for breach of a contract to sell [*or purchase*] the lease, with goodwill, fixtures, and stock in trade of a public-house.

The plaintiff's claim is for damages for breach of covenant for title [*or for quiet enjoyment, or, &c.*] in a conveyance of land.

Trespass to land. The plaintiff's claim is for damages for wrongfully entering the plaintiff's land and drawing water from his well [*or cutting his grass, or pulling down his timber, or pulling down his fences, or removing his gate, or using his road or path, or crossing his field, or depositing sand there, or carrying away gravel from thence, or carrying away stones from his river*].

Support. The plaintiff's claim is for damages for wrongfully taking away the support of plaintiff's land [*or house, or mine*].

Way. The plaintiff's claim is for damages for wrongfully obstructing a way [*public highway or a private way*].

Water-course, &c. The plaintiff's claim is for damages for wrongfully diverting [*or obstructing, or polluting or diverting water from*] a watercourse.

The plaintiff's claim is for damages for wrongfully discharging water upon the plaintiff's land [*or into the plaintiff's mine*].

The plaintiff's claim is for damages for wrongfully obstructing the plaintiff's use of a well.

Pasture. The plaintiff's claim is for damages for the infringement of the plaintiff's right of pasture.

[*This Form shall be sufficient whatever the nature of the to pasture be*].

Light. The plaintiff's claim is for damages for obstructing the access of light to plaintiff's house.

Sporting. The plaintiff's claim is for damages for the infringement of the plaintiff's right of sporting.

Patent. The plaintiff's claim is for damages for the infringement of the plaintiff's patent.

Copyright. The plaintiff's claim is for damages for the infringement of the plaintiff's copyright.

Trade mark. The plaintiff's claim is for damages for wrongfully using [*or imitating*] the plaintiff's trade mark.

Work. The plaintiff's claim is for damages for breach of a contract to build a ship [*or to repair a house, &c.*]

The plaintiff's claim is for damages for breach of a contract to employ the plaintiff to build a ship, *&c.*

Nuisance. The plaintiff's claim is for damages to his house, trees, crops, &c., caused by noxious vapours from the defendants factory, [*or, &c.*]

The plaintiff's claim is for damages from nuisance by noise from the defendant's works [*or stables, or, &c.*]

The plaintiff's claim is for damages for loss of the plaintiff's goods in the defendant's inn. Innkeeper.

Add to Indorsement:—

And for a mandamus. Mandamus.

Add to Indorsement:—

And for an injunction. Injunction.

[*Add to Indorsement where claim is to land, or to establish title, or both.*]

And for mesne profits. Mesne profits.

And for an account of rents or arrears of rent. Arrears of rent.

And for breach of covenant for [*repairs*]. Breach of covenant.

Section V.

Probate.

1. *By an executor or legatee propounding a will in solemn form.*

The plaintiff claims to be executor of the last will dated the day of of C. W., late of Gentleman, deceased, who died on the day of and to have the said will established. This writ is issued against you as one of the next of kin of the said deceased [*or as the case may be*].

2. *By an executor or legatee of a former will, or a next of kin, of the deceased seeking to obtain the revocation of a Probate granted in common form.*

The plaintiff claims to be executor of the last will dated the day of of C. D,, late of Gentleman, deceased, who died on the day of and to have the probate of a pretended will of the said deceased dated the day of revoked. This writ is issued against you as the executor of the said pretended will [*or as the case may be*].

3. *By an executor or legatee of a will when letters of administration have been granted as in an intestacy.*

The plaintiff claims to be executor of the last will of C. D., late of Gentleman, deceased, who died on the day of dated the day of

The plaintiff claims that the grant of letters of administration of the personal estate of the said deceased obtained by you should be revoked, and probate of the said will granted to him.

4. *By a person claiming a grant of administration as a next of kin of the deceased, but whose interest as next of kin is disputed.*

The plaintiff claims to be the brother and sole next of kin of C. D. of Gentleman, deceased, who died on the day of intestate, and to have as such a grant of administration to the personal estate of the said intestate. This writ is issued against you because you have entered a caveat, and have alleged that you are the sole next of kin of the deceased [*or as the case may be*].

Section VI.

Admiralty.

1. *Damage to vessel by collision.*

The plaintiffs as owners of the vessel "Mary," of the port of claim 1,000*l.* against the brig or vessel "Jane" for damage occasioned by a collision, which took place in the North Sea in the month of May last.

2. *Damage to cargo by collision.*

The plaintiffs as owners of the cargo laden on board the vessel "Mary," of the port of , claim *l.* against the vessel "Jane," for damage done to the said cargo in a collision in the North Sea in the month of May last.

[*The two previous Forms may be combined.*]

3. *Damage to cargo otherwise.*

The plaintiff as owner of goods laden on board the vessel "Mary," on a voyage from Lisbon to England, claims from the owner of the said vessel *l.* for damage done to the said goods during such voyage.

4. *In causes of possession.*

The plaintiff as sole owner of the vessel "Mary," of the port of claims to have possession decreed to him of the said vessel.

5. The plaintiff claims possession of the vessel "Mary," of the port of , as owner of 48–64th shares of the said vessel, against C. D., owner of 16–64th shares of the said vessel.

6. The plaintiff as part owner of the vessel "Mary," claims against C. D., part owner and his shares in the said vessel *l.* as part of the earnings of the said vessel due to plaintiff.

7. The plaintiff as owner of 48–64th shares of the vessel "Mary," of the port of , claims possession of the said brig as against C. D., the master thereof.

8. The plaintiff under a mortgage, dated the day of , claims against the vessel "Mary," *l.*, being the amount of his mortgage thereon, and *l.* for interest.

9. The plaintiff as assignee of a bottomry bond, dated the day of and granted by C.D. as master of the vessel "Mary," of the port of , to A.B., at St. Thomas's, in the West Indies, claims *l.* against the vessel "Mary," and the cargo laden thereon.

10. *By a part owner of a vessel.*

The plaintiff as owner of 24–64th shares of the vessel "Mary," being dissatisfied with the management of the said vessel by his co-owners, claims that his co-owners shall give him a bond in *l.* for the value of the plaintiff's said shares in the said vessel.

11. The plaintiffs as owners of the derelict vessel "Mary," of the port of , claim to be put in possession of the said vessel and her cargo.

12. *By salvors.*

The plaintiffs as the owners, master, and crew of the vessel "Caroline," of the port of , claim the sum of *l.* for salvage services performed by them to the vessel "Mary," off the Goodwin Sands, on the day of .

13. *Claim for towage.*

The plaintiffs as owners of the steam-tug "Jane," of the port of , claim *l.* for towage services performed by the said steam-tug to the vessel "Mary" on the day of .

14. *Seamen's wages.*

The plaintiffs, as seamen on board the vessel "Mary," claim *l.* for wages due to them, as follows: (1), the mate, 30*l.* for two months' wages from the day of .

15. *For necessaries.*

The plaintiffs claim *l.* for necessaries supplied to the vessel "Mary," at the port of Newcastle-on-Tyne, delivered on the day of and the day of .

Section VII.

Special Indorsements under Order III., Rule 6.

1. The plaintiff's claim is for the price of goods sold. The following are the particulars:—

1873—31st December.—

	£	s.	d.
Balance of account for butcher's meat to this date	35	10	0
1874—1st January to 31st March.—			
Butcher's meat supplied . . .	74	5	0
	109	15	0
1874—1st February.—Paid	45	0	0
Balance due . . .	£64	15	0

2. The plaintiff's claim is against the defendant A. B. as principal, and against the defendant C. D. as surety, for the price of goods sold to A. B. The following are the particulars:—

1874—2nd February. Guarantee by C. D. of the price of woollen goods, to be supplied to A. B.

	£	s.	d.
2nd February—To goods . . .	47	15	0
3rd March—To goods	105	14	0
17th March—To goods . . .	14	12	0
5th April—To goods	34	0	0
	£202	1	0

3. The plaintiff's claim is against the defendant, as maker of a promissory note. The following are the particulars:—

Promissory note for 250*l.*, dated 1st January, 1874, made by defendant, payable four months after date.

Principal	250*l.*
Interest	

4. The plaintiff's claim is against the defendant A. B. as acceptor, and against the defendant C. D. as drawer, of a bill of exchange. The following are the particulars:—

Bill of exchange for 500*l.*, dated 1st January, 1874, drawn by defendant C. D. upon and accepted by defendant A. B., payable three months after date.

Principal	500*l.*
Interest	

5. The plaintiff's claim is for principal and interest due upon a bond. The following are the particulars:—

Bond dated 1st January, 1873. Condition for payment of 100*l.* on the 26th December, 1873.

Principal due	50*l.*
Interest	

6. The plaintiff's claim is for principal and interest due under a covenant. The following are the particulars:—

Deed dated covenant to pay 100*l.* and interest.

Principal due	80*l.*
Interest	

Section VIII.

Indorsements of Character of Parties.

Executors.

The plaintiff's claim is as executor [*or administrator*] of C. D., deceased, for, *&c.*

The plaintiff's claim is against the defendant A. B., as executor [*or, &c.*] of C. D., deceased, for, *&c.*

The plaintiff's claim is against the defendant A. B., as executor of X. Y., deceased, and against the defendant C. D., in his personal capacity, for, *&c.*

By husband and wife, executrix.

The claim of the plaintiff C. D. is as executrix of X. Y., deceased, and the claim of the plaintiff A. B. as her husband, for

Against husband and wife, executrix.

The claim of the plaintiff is against the defendant C. D., as executrix of the defendant C. D., deceased, and against the defendant A. B., as her husband, for

Trustee in bankruptcy.

The plaintiff's claim is as trustee under the bankruptcy of A. B., for

The plaintiff's claim is against the defendant as trustee under the bankruptcy of A. B., for

Trustees.

The plaintiff's claim is as [*or the plaintiff's claim is aganist the defendant as*] trustee under the will of A. B. [*or under the settlement upon the marriage of* A. B. *and* X. Y., *his wife*].

Public officer.

The plaintiff's claim is as public officer of the Bank, for

The plaintiff's claim is against the defendant as public officer of the Bank, for

The plaintiff's claim is against the defendant A. B. as principal and against the defendant C. D. as public officer of the Bank, as surety, for

Heir and devisee.

The plaintiff's claim is against the defendant as heir-at-law of A. B., deceased.

The plaintiff's claim is against the defendant C. D. as heir-at-law, and against the defendant E. F. as devisee of lands under the will of A. B.

Qui tam action.

The plaintiff's claim is as well for the Queen as for himself, for

APPENDIX (B).

NOTICES, &c.

Form 1.

Notice by Defendant to Third Party.

187 . (*Here put the letter and number.*)

Notice filed 187 .

In the High Court.
Queen's Bench Division.

Between A. B., Plaintiff,
and
C. D., Defendant.

To Mr. X. Y.

Take notice, that this action has been brought by the plaintiff against the defendant [as surety for M. N., upon a bond conditioned for payment of 2,000*l.* and interest to the plaintiff.

The defendant claims to be entitled to contribution from you to the extent of one-half of any sum which the plaintiff may recover against him, on the ground that you are [his co-surety under the said bond, *or*, also surety for the said M. N., in respect of the said matter, under another bond made by you in favour of the said plaintiff, dated the day of , A.D.].]

Or [as acceptor of a bill of exchange for 500*l.*, dated the day of , A.D. , drawn by you before and accepted by the defendant, and payable three months after date.

The defendant claims to be indemnified by you against liability under the said bill, on the ground that it was accepted for your accommodation.]

Or [to recover damages for a breach of a contract for the sale and delivery to the plaintiff of 1,000 tons of coal.

The defendant claims to be indemnified by you against liability in respect of the said contract, or any breach thereof, on the ground that it was made by him on your behalf and as your agent.]

And take notice that, if you wish to dispute the plaintiff's claim in this action as against the defendant C. D., you must cause an appearance to be entered for you within eight days after service of this notice.

In default of your so appearing, you will not be entitled in any future proceeding between the defendant C. D. and yourself to dispute the validity of the judgment in this action, whether obtained by consent or otherwise.

(Signed) E. T.

Or,

X Y.,
Solicitor for the defendant,
E. T.

Appearance to be entered at

Form 2.

187 . [*Here put the letter and number.*]

In the High Court.
Queen's Bench Division.

Between A. B., Plaintiff,
and
C. D., Defendant.

The plaintiff confesses the defence stated in the paragraph of the defendant's statement of defence [*or*, of the defendant's further statement of defence].

Form 3.

187 . [*Here put the letter and number.*]

In the High Court of Justice.
Division.

Between A. B., Plaintiff,
and
C. D., Defendant.

The particulars of the plaintiff's complaint herein, and of the relief and remedy to which he claims to be entitled, appear by the indorsement upon the writ of summons.

Form 4.

"To the within-named X. Y.

"Take notice that if you do not appear to the within counter-claim of the within-named C. D. within eight days from the service of this defence and counter-claim upon you, you will be liable to have judgment given against you in your absence.

"Appearances are to be entered at ."

Form 5.

Notice of Payment into Court.

In the High Court of Justice. 1875. B. No.
Q. B. Division.

A. B. *v.* C. D.

Take notice that the defendant has paid into Court *l.*, and says that that sum is enough to satisfy the plaintiff's claim [*or the plaintiff's claim for, &c.*]

To Mr. X. Y.,
the Plaintiff's Solicitor.

Z.,
Defendant's Solicitor.

Form 6.

Acceptance of Sum paid into Court.

In the High Court of Justice. 1875. B. No.
Q. B. Division.

A. B. *v.* C. D.

Take notice that the plaintiff accepts the sum of *l.* paid by you into Court in satisfaction of the claim in respect of which it is paid in.

Form 7.

Form of Interrogatories.

In the High Court of Justice. 1874. B. No.
Division.

Between A. B., Plaintiff,
and
C. D., E. F., and G. H., Defendants.

Interrogatories on behalf of the above-named [*plaintiff*, or *defendant C. D.*] for the examination of the above-named [*defendants E. F. and G. H.*, or *plaintiff*.]

1. Did not, &c.
3. Has not, &c.

&c. &c. &c.

[*The defendant* E. F. *is required to answer the interrogatories numbered* .]

[*The defendant* G. H. *is required to answer the interrogatories numbered* .]

Form 8.

Form of Answer to Interrogatories.

In the High Court of Justice. 1874. B. No.
Division.
Between A. B., Plaintiff,
C. D., E. F., and G. H., Defendants.

The answer of the above-named defendant E. F. to the interrogatories for his examination by the above-named plaintiff.

In answer to the said interrogatories, I, the above-named E. F., make oath and say as follows:—

.....

.....

Form 9.

Form of Affidavit as to Documents.

In the High Court of Justice. 1874. B. No.
Division.
Between A. B., Plaintiff,
and
C. D., Defendant.

I, the above-named defendant C. D., make oath and say as follows:—

1. I have in my possession or power the documents relating to the matters in question in this suit set forth in the first and second parts of the first schedule hereto.

2. I object to produce the said documents set forth in the second part of the said first schedule hereto.

3. That [*here state upon what grounds the objection is made, and verify the facts as far as may be*].

4. I have had, but have not now, in my possession or power the documents relating to the matters in question in this suit set forth in the second schedule hereto.

5. The last-mentioned documents were last in my possession or power on [*state when*].

6. That [*here state what has become of the last-mentioned documents, and in whose possession they now are*].

7. According to the best of my knowledge, information, and belief, I have not now, and never had in my possession, custody, or power, or in the possession, custody, or power of my solicitors or agents, solicitor or agent, or in the possession, custody, or power of any other persons or person on my behalf, any deed, account, book of account, voucher, receipt, letter, memorandum, paper, or writing, or any copy of or extract from any such document, or any other document whatsoever, relating to the matters in question in

this suit, or any of them, or wherein any entry has been made relative to such matters, or any of them, other than and except the documents set forth in the said first and second schedules hereto.

Form 10.

Form of Notice to produce Documents.

In the High Court of Justice.

Q. B. Division.

A. B. *v.* C. D.

Take notice that the [*plaintiff or defendant*] requires you to produce for his inspection the following documents referred to in your [*statement of claim*, or *defence*, or *affidavit*, *dated the day of* A.D.].

[*Describe documents required.*]

X. Y.,
Solicitor to the

To Z.,
Solicitor for

R.S.C. April, 1880.

10*a*.

Notice to Produce (*general form*).

In the High Court of Justice.

Division. 18 No. .

Between

Plaintiff,

and

Defendant.

Take notice, that you are hereby required to produce and show to the Court on the trial of this action all books, papers, letters, copies of letters, and other writings and documents in your custody, possession, or power, containing any entry, memorandum, or minute relating to the matters in question in this action, and particularly

Dated the day of 18 .

To the above-named

h solicitor or agent

(Signed)
of
agent for
solicitor for the above-named

Form 11.

Form of Notice to inspect Documents.

In the High Court of Justice,
Q. B. Division.
A. B. *v.* C. D.

Take notice that you can inspect the documents mentioned in your notice of the day of A.D. [*except the deed numbered in that notice*] at my office on Thursday next the instant, between the hours of 12 and 4 o'clock.

Or, that the [*plaintiff or defendant*] objects to giving you inspection of the documents mentioned in your notice of the day of A.D. , on the ground that [*state the ground*]:—

Form 12.

Form of Notice to admit Documents.

In the High Court of Justice.
Division.
A. B. *v.* C. D.

Take notice that the plaintiff [*or* defendant] in this cause proposes to adduce in evidence the several documents hereunder specified, and that the same may be inspected by the defendant [*or plaintiff*], his solicitor or agent, at , on , between the hours of ; and the defendant [*or plaintiff*] is hereby required, within forty-eight hours from the last-mentioned hour, to admit that such of the said documents as are specified to be originals were respectively written, signed, or executed, as they purport respectively to have been; that such as are specified as copies are true copies; and such documents as are stated to have been served, sent, or delivered, were so served, sent, or delivered respectively; saving all just exceptions to the admissibility of all such documents as evidence in this cause.

Dated, &c.

To E. F., solicitor [*or agent*] for defendant [*or plaintiff*].
G. H., solicitor [*or agent*] for plaintiff [*or defendant*].

[*Here describe the documents, the manner of doing which may be as follows:—*]

Originals.

Description of Documents.	Dates.
Deed of covenant between A. B. and C. D. first part, and E. F. second part - -	January 1, 1848.
Indenture of lease from A. B. to C. D. -	February 1, 1848.
Indenture of release between A. B., C. D. first part, &c. - - - - -	February 2, 1848.
Letter—defendant to plaintiff - - -	March 1, 1848.
Policy of insurance on goods by ship "Isabella," on voyage from Oporto to London - - - - - -	December 3, 1847.
Memorandum of agreement between C. D., captain of said ship, and E. F. - -	January 1, 1848.
Bill of exchange for 100*l.* at three months, drawn by A. B. on and accepted by C.D., indorsed by E. F. and G. H. - -	May 1, 1849.

Copies.

Description of Documents.	Dates.	Original or Duplicate served, sent, or delivered, when, how, and by whom.
Register of baptism of A.B. in the parish of X. -	January 1, 1848.	
Letter—plaintiff to defendant - - - -	February 1, 1848.	Sent by General Post, February 2, 1848 - -
Notice to produce papers -	March 1, 1848 -	Served March 2, 1848, on defendant's attorney by E. F. of——
Record of a judgment of the Court of Queen's Bench in an action, J. S. *v.* J. N.	Trinity Term, 10th Vict.	
Letters Patent of King Charles II. in the Rolls Chapel - - - -	January 1, 1680.	

Form 13.

Setting down Special Case.

1875. B. No.

In the High Court of Justice.

Division.

Between A. B., Plaintiff,

and

C. D. and others, Defendants.

Set down for argument the special case filed in this action on the day of , 187 .

X. Y., Solicitor for

Form 14.

Form of Notice of Trial.

In the High Court of Justice.

Division.

A. B. *v.* C. D.

Take notice of trial of this action [*or of the issues in this action ordered to be tried*] by a Judge and jury [*or as the case may be*] in Middlesex, [*or as the case may be*] for the day of next.

X. Y., plaintiff's solicitor [*or as the case may be*].

Dated

To Z., defendant's solicitor [*or as the case may be*].

Form 15.

Form of Certificate of Officer after Trial by a Jury.

30th November, 1876. 1876. No.

In the High Court of Justice.

Division.

Between A. B., Plaintiff,

and

C. D., Defendant.

I certify that this action was tried before the Honourable Mr. Justice and a special jury of the county of on the 12th and 13th days of November, 1876.

The jury found [*state findings*].

The Judge directed that judgment should be entered for the plaintiff for *l.*, with costs of summons [*or as the case may be*].

A. B.,

[Title of Officer.]

Form 16.

Affidavit of Scripts.

In the High Court of Justice.

Probate Division.

Between A. B., Plaintiff,

and

C. D., Defendant.

I, A. B. of , in the county of party in this cause, make oath and say, that no paper or parchment writing, being or purporting to be or having the form or effect of a will or codicil or other testamentary disposition of E. F., late of , in the county of , deceased, the deceased in this cause, or being or purporting to be instructions for, or the draft of, any will, codicil, or testamentary disposition of the said E. F., has at any time, either before or since his death, come to the hands, possession, or knowledge of me, this deponent, or to the hands, possession, or knowledge of my solicitors in this suit, so far as is known to me, this deponent, save and except the true and original last will and testament of the said deceased now remaining in the principal registry of this Court [*or* hereunto annexed, *or as the case may be*], the said will bearing date the day of 18 [*or as the case may be*], also save and except [*here add the dates and particulars of any other testamentary papers of which the deponent has any knowledge*].

(Signed) A. B.

Sworn at on the day of 18 .

Before me,

[*Person authorised to administer oaths under the Act.*]

Form 17.

R.S.C. April, 1880.

Notice of Motion.

In the High Court of Justice.

Division. 18 No.

Between

Plaintiff,

and

Defendant.

Take notice, that the Court will be moved

on day the day of 18 at o'clock in the forenoon, or so soon thereafter as counsel can be heard, by

that

Dated the day of 18 .

(Signed)
of
agent for
solicitor for the

To

Form 18.

Notice of Entry of Demurrer for Argument. R.S.C. April, 1880.

In the High Court of Justice.

Division. 18 No.

Between

Plaintiff,

and

Defendant.

Take notice that I have this day entered for argument the demurrer of the to the in this action.

Dated the day of 18 .

(Signed)
of
agent for
solicitor for the

To

Form 19.

Notice of Discontinuance. R S.C. April, 1880.

In the High Court of Justice.

Division. 18 No.

Between

Plaintiff,

and

Defendant.

Take notice, that the plaintiff hereby* † Dated the day of 18

(Signed)
of
agent for
solicitor for the plaintiff.

To

* "Wholly discontinues this action," or "withdraws so much of h claim in this action as relates to," &c.

† If not against all the defendants add "as against the defendant," &c.

Form 20.

R.S.C. April, 1880.

Notice of Entry of Appearance.

In the High Court of Justice.

Division. 18 No.

Between

Plaintiff,

and

Defendant.

Take notice, that have this day entered an appearance at the Central Office, Royal Courts of Justice [*or* at the office of the registrar of the istrict registry], for the defendant to the writ of summons in this action.

The said defendant require [*or* do not require] delivery of a statement of claim.

Dated the day of 18

(Signed)
of
Agent for
Solicitor for the defendant .

To

Form 21.

R.S.C. April, 1880.

Notice of Cross-examination of Deponents at Trial.

In the High Court of Justice.

Division. 18. No.

Between

Plaintiff,

and

Defendant.

Take notice, that the intend at the trial of this action to cross-examine the several deponents named and described in the schedule hereto on their affidavits therein specified.

And also take notice that you are hereby required to produce the said deponents for such cross-examination before the Court aforesaid.

Dated the day of 18 .

(Signed)
Agent for
of
Solicitor for the

To

THE SCHEDULE above referred to.

Name of Deponent.	Address and Description.	Date when Affidavit Filed.

FORM 22.

Notice of Renewal of Writ of Execution. R.S.C. April, 1880.

In the High Court of Justice.

Division. 18 No.

Between

Plaintiff,

and

Defendant.

Take notice, that the writ of issued in this action directed to the sheriff of and bearing date the day of 18 , has been renewed for one year from the day of 18 .

Dated the day of 18 .

Signed)
of
Agent for
Solicitor for the

To the sheriff of

FORM 23.

Notice as to Stock under Order XLVI. R.S.C. April, 1880.

To the [*here add the name of the Company*].

Take notice that the stock comprised in and now subject to the trusts of the [*settlement, will, &c.*] referred to in the affidavit to which this notice is annexed consists of the following (that is to say) [*here specify the stock*].

This notice is intended to stop the transfer of the stock only, and not the receipt of dividends [*or*, the receipt of the dividends on the stock as well as the transfer of the stock].

(Signed) A. B.

AFFIDAVITS.

FORM 24.

R.S.C. April 1880.

AFFIDAVIT OF SERVICE OF SUMMONS.

In the High Court of Justice.

Division. 18 No.

Between

Plaintiff,

and

Defendant.

I

of

solicitor for the above-named

make oath and say as follows :—

I did on the day of 18 ,

before the hour of in the noon, serve

the above-named

in this action with a true copy duly stamped of the summons hereto annexed marked A, by leaving it at the of

the said

situate

with there

Sworn at

this

day of 18

Before me

This affidavit is filed on behalf of the

FORM 25.

R.S.C. April, 1880.

Affidavit on Registration of Bill of Sale.

In the High Court of Justice.

Division. 18 No.

I

of

make oath and say as follows :—

1. The paper writing hereto annexed and marked A is a true copy of a bill of sale, and every schedule or inventory thereto annexed or therein referred to, and of every attestation of the execution thereof, as made and given and executed by

2. The said bill of sale was made and given by the said

on the day of 18 .

3. I was present and saw the said

duly execute the said bill of sale on the said day of

18 .

4. The said
resides at [*state residence at time of swearing affidavit*] and is [*state occupation*]

5. The name subscribed to the said bill of sale as that of the witness attesting the due execution thereof is in the proper hand-writing of me this deponent.

6. I am a solicitor of the Supreme Court, and reside at

7. Before the execution of the said bill of sale by the said I fully explained to the nature and effect thereof.

Sworn at
the day of 18 }
Before me,

This affidavit is filed on behalf of

Form 26.

Affidavit in support of Garnishee Order.

R.S.C. April 1880.

In the High Court of Justice.

Division. 18 . No.

Between

Judgment Creditor.

and

Judgment Debtor.

I,
of
the above-named judgment creditor [*or* solicitor for the above-named judgment creditor] make oath and say as follows :—

1. By a judgment of the Court given in this action, and dated the day of 18 , it was adjudged that I [*or* the above-named judgment creditor] should recover against the above-named judgment debtor the sum of £ , and costs to be taxed, and the said costs were by a master's certificate dated the day of 18 , allowed at £

2. The said still remains unsatisfied to the extent of and interest amounting to £

‡ Name, address, and description of garnishee.

3. ‡ is indebted to the judgment debtor in the sum of £ or thereabouts.

4. The said is within the jurisdiction of this Court.

Sworn at
the day of 18

Before me,

This affidavit is filed on behalf of the

Form 27.

R.S.C. April, 1880.

Affidavit on Interpleader.

In the High Court of Justice.

Division. 18 . No.

Between

Plaintiff,

and

Defendant.

I
of
the defendant in the above action make oath and say as follows:—

1. The writ of summons herein was issued on the day of 18 , and was served on me on the day of 18 . I have not yet delivered a statement of defence herein.

2. The action is brought to recover

* "is" or "are."

The said *in my possession, but I claim no interest therein.

3. The right to the said subject matter of this action has been and is claimed† by one who‡

† If claim in writing make the writing an exhibit.

‡ State expectation of suit, or that he has already sued.

4. I do not in any manner collude with the said or with the above-named plaintiff, but I am ready to bring into Court or to pay or dispose of the said

in such manner as the Court may order or direct.

Sworn at
the day of 18

Before me,

This affidavit is filed on behalf of the

Form 28.

Affidavit as to Stock under Order XLVI.

R.S.C. April, 1880.

In the matter of [*here state the nature of the document comprising the stock, and add the date and other particulars so far as known to the deponent, sufficiently to identify the document*];

and

In the matter of the Act of Parliament, 5 Vict. c. 5.

I of make oath and say that according to the best of my knowledge, information, and belief, I am [*or, if the affidavit is made by the solicitor*, A. B., of is] beneficially interested in the stock comprised in the [*settlement, will, &c.*] above-mentioned, which stock, according to the best of my knowledge and belief, now consists of the stock specified in the notice hereto annexed.

The affidavit is filed on behalf of A. B., whose address is [*state address for service*].

APPENDIX (C).

No. 1.

Account Stated.

In the High Court of Justice. 187 . B. No.
Division.
Writ issued 3rd August, 1875.
Between A. B., Plaintiff,
and
E.F., Defendant.

Statement of Claim.

Claim. 1. Between the 1st of January and the 28th of February, 1875, the plaintiff supplied to the defendant various articles of drapery; and accounts and invoices of the goods so supplied, and their prices, were from time to time furnished to the defendant, and payments on account were from time to time made by the defendant.

2. On the 28th of February, 1875, a balance remained due to the plaintiff of 75*l.* 9*s.*, and an account was on that day sent by the plaintiff to the defendant showing that balance.

3. On the 1st of March following, the plaintiff's collector saw the defendant at his house, and asked for payment of the said balance, and the defendant then paid him by cheque 25*l.* on account of the same. The residue of the said balance, amounting to 50*l.* 9*s.*, has never been paid.

The plaintiff claims £ .

The plaintiff proposes that this action should be tried in the county of Northampton.

No. 2.

Administration of Estate.

[1876. B. No. 233.]

Of intestate. In the High Court of Justice.
Chancery Division.
[*Name of Judge.*]
Writ issued 22nd December, 1876.

In the matter of the estate of A.B., deceased.
Between E. F., Plaintiff,
and
G.H., Defendant.

Statement of Claim.

1. A. B. of K., in the county of L., died on the 1st of July, 1875, intestate. The defendant G. H. is the administrator of A. B. Claim.

2. A. B. died entitled to lands in the said county for an estate of fee simple, and also to some other real estate and to personal estate. The defendant has entered possession of the real estate of A. B., and received the rents thereof. The legal estate in such real estate is outstanding in mortgages under mortgages created by the intestate.

3. A. B. was never married; he had one brother only, who pre-deceased him without having been married, and two sisters only, both of whom also pre-deceased him, namely M. N. and P. Q. The plaintiff is the only child of M. N., and the defendant is the only child of P. Q.

The plaintiff claims:—

1. To have the real and personal estate of A. B. administered in this Court, and for that purpose to have all proper directions given and accounts taken.
2. To have a receiver appointed of the rents of his real estate.
3. Such further or other relief as the nature of the case may require.

[1876. B. No. 233.]

In the High Court of Justice.
Chancery Division.
[*Name of Judge.*]
In the matter of the estate of A. B., deceased.
Between E. F., Plaintiff,
and
G. H., Defendant.

Statement of Defence.

1. The plaintiff is an illegitimate child of M. N. She was never married. Defence.

2. The intestate was not entitled to any real estate at his death, except a copyhold estate situate in the county of R., and held of the manor of S. According to the custom of that manor, when the copyholder dies without issue, and without leaving a

brother, or issue of a deceased brother, the copyhold descends to his elder sister and her issue in preference to his younger sister and her issue. P. Q. was older than M. N.

3. The personal estate of A. B. was not sufficient for the payment of his debts, and has all been applied in payment of his funeral and testamentary expenses, and part of his debts.

[1876. B. No. 233.]

In the High Court of Justice.
Chancery Division.
[*Name of Judge.*]
In the matter of the estate of A. B., deceased.
Between E. F., Plaintiff,
and
G. H., Defendant.

Reply.

Reply. The plaintiff joins issue with the defendant upon his defence.

No. 3.

[1876. B. No. 234.]

Of testator. In the High Court of Justice.
Chancery Division.
[*Name of Judge.*]
Writ issued 22nd December, 1876.
In the matter of the estate of A. B., deceased.
Between E. F., Plaintiff,
and
G. H., Defendant.

Claim. 1. A. B. of K., in the county of L., duly made his last will, dated the 1st day of March, 1873, whereby he appointed the defendant and M. N. (who died in the testator's lifetime) executors thereof, and devised and bequeathed his real and personal estate to and to the use of his executors in trust, to pay the rents and income thereof to the plaintiff for his life; and after his decease, and in default of his having a son who should attain 21, or a daughter who should attain that age, or marry, upon trust as to his real estate for the person who would be the testator's heir-at-law, and as to his personal estate for the persons who would be the testator's next-of-kin if he had died intestate at the time of the death of the plaintiff, and such failure of his issue as aforesaid.

2. The testator died on the 1st day of July, 1873, and his will was proved by the defendant on the 4th of October, 1873. The plaintiff has not been married.

3. The testator was at his death entitled to real and personal estate; the defendant entered into the receipt of the rents of the real estate, and got in the personal estate; he has sold some part of the real estate.

The plaintiff claims—

1. To have the real and personal estate of A. B. administered in this Court, and for that purpose to have all proper directions given and accounts taken.
2. Such further or other relief as the nature of the case may require.

[1876. B. No. 234.]

In the High Court of Justice.
Chancery Division.
[*Name of Judge.*]
In the matter of the estate of A. B., deceased.
Between E. F., Plaintiff,
and
G. H., Defendant.

Statement of Defence.

1. A. B.'s will contained a charge of debts; he died insolvent; he was entitled at his death to some real estate which the defendant sold, and which produced the net sum of 4,300*l.*, and the testator had some personal estate which the defendant got in and which produced the net sum of 1,204*l.* The defendant applied the whole of the said sums and the sum of 84*l.* which the defendant received from rents of the real estate in the payment of the funeral and testamentary expenses and some of the debts of the testator. The defendant made up his accounts and sent a copy thereof to the plaintiff on the 10th of January, 1875, and offered the plaintiff free access to the vouchers to verify such accounts, but he declined to avail himself of the defendant's offer. The defendant submits that the plaintiff ought to pay the costs of this action. Defence.

[1876. B. No. 234.]

In the High Court of Justice.
Chancery Division.
[*Name of Judge.*]
In the matter of the estate of A. B., deceased.
Between E. F., Plaintiff,
and
G. H., Defendant.

Reply.

The plaintiff joins issue with the defendant upon his defence. Reply.

No. 4.

[1876. B. No. 235.]

Breach of trust.

In the High Court of Justice.
Chancery Division.
[*Name of Judge.*]
In the matter of the estate of W. H., deceased.
Writ issued 22nd December, 1876.
Between A. B. and C. his wife, Plaintiffs,
and
E. F. and G. H., Defendants.

Statement of Claim.

Claim.

1. W. H., of H., in the county of L., duly made his last will, dated the 19th day of March, 1861, whereby he appointed the defendants the executors thereof, and bequeathed to them all his personal estate in trust, to call in, sell, and convert the same into money, and thereout to pay his debts and funeral and testamentary expenses, and to divide the ultimate surplus into three shares, and to pay one of such three shares to each of his two children, T. H., and E., the wife of E. W., and to stand possessed of the remaining third share upon trust for the children of the testator's son J. H. in equal shares, to be divided among them when the youngest of such children should attain the age of 21 years. And the testator devised his real estates to the defendants upon trust until the youngest child of the said J. H. should attain the age of 21 years, to pay one third part of the rents thereof to the said T. H., and one other third part thereof to the said E. W., and to accumulate the remaining third part by way of compound interest, and so soon as the youngest child of the said J. H. should attain the age of 21 years, to sell the said real estates, and out of the proceeds of such sale to pay the sum of 1,000*l.* to the said T. H., and to invest one moiety of the residue in manner therein mentioned, and stand possessed thereof in trust to pay the income thereof to the said E., the wife of the said E. W., during her life for her separate use, and after her death for her children, the interests of such children being contingent on their attaining the age of 21 years, and to divide the other moiety of such proceeds of sale and the accumulations of the third share of rents thereinbefore directed to be accumulated among such of the children of the said J. H. as should be then living, and the issue of such of them as should be then dead, in equal shares per stirpes.

2. The testator died on the 25th day of April, 1873, and his said will was proved by the defendants in the month of June, 1873.

3. The testator died possessed of one third share in a leasehold colliery called the Paradise Colliery, and in the engines,

machinery, stock in trade, book debts, and effects belonging thereto. He was also entitled to real estate, and other personal estate.

4. The testator left T. H. and E., the wife of E. W., him surviving. J. H. had died in the testator's lifetime, leaving four children, and no more. The plaintiff C. B. is the youngest of the children of J. H., and attained the age of 21 years on the 1st of June, 1871. The other three children of J. H. died without issue in the lifetime of the testator.

5. E. W. has several children, but no child has attained the age of 21 years.

6. T. H. is the testator's heir-at-law.

7. The defendants have not called in, sold, and converted into money the whole of the testator's personal estate, but have allowed a considerable part thereof to remain outstanding; and in particular the defendants have not called in, sold or converted into money the testator's interest in the said colliery, but have, from the death of the testator to the present time, continued to work the same in partnership with the other persons interested therein. The estate of the testator has sustained considerable loss by reason of such interest not having been called in, sold, or converted into money.

8. The defendants did not upon the death of the testator sell the testator's furniture, plate, linen, and china, but allowed the testator's widow to possess herself of a great part thereof, without accounting for the same, and the same has thereby been lost to the testator's estate.

9. The defendants have not invested the share of the testator's residuary personal estate given by his will to the children of the testator's son J. H., and have not accumulated one third of the rents and profits of his real estate as directed by the said will, but have mixed the same share and rents with their own moneys, and employed them in business on their own account.

10. The defendants have sold part of the real estates of the testator, but a considerable part thereof remains unsold.

11. A receiver ought to be appointed of the outstanding personal estate of the testator, and the rents and profits of his real estate remaining unsold.

The plaintiffs claim:—

1. That the estate of the said testator may be administered, and the trusts of his will carried into execution under the direction of the court.
2. That it may be declared that the defendants, by carrying on the business of the said colliery instead of realising the same, have committed a breach of trust, and that the parties interested in the testator's estate are entitled to the value of the testator's interest in the said part-

nership property as it stood at the testator's death, with interest thereon, or at their election to the profits which have been made by the defendants in respect thereo since the testator's death, whichever shall be found most for their benefit.

3. That an account may be taken of the interest of the testator in the said colliery, and in the machinery, book debts, stock, and effects belonging thereto, according to the value thereof at the testator's death, and an account of all sums of money received by or by the order, or for the use of the defendants, or either of them, on account of the testator's interest in the said colliery, and that the defendants may be ordered to make good to the estate of the testator the loss arising from their not having realised the interest of the testator in the said colliery within a reasonable time after his decease.
4. That an account may be taken of all other personal estate of the testator come to the hands of the defendants, or either of them, or to the hands of any other person by their or either of their order, or for their or either of their use, or which, but for their wilful neglect or default, might have been so received; and an account of the rents and profits of the testator's real estate, and the moneys arising from the sale thereof, possessed or received by or by the order, or for the use of the defendants, or either of them.
5. That the real estate of the testator remaining unsold may be sold under the direction of the Court.
6. That the defendants may be decreed, at the election of the parties interested in the testator's estate, either to pay interest at the rate of 5*l.* per cent. per annum upon such moneys belonging to the estate of the testator as they have improperly mixed with their own moneys and employed in business on their own account, and that half-yearly rests may be made in taking such account as respects all moneys which by the said will were directed to be accumulated, or to account for all profits by the employment in their business of the said trust money.
7. That a receiver may be appointed of the outstanding personal estate of the testator, and to receive the rents and profits of his real estate remaining unsold.
8. Such further or other relief as the nature of the case may require.

[1876. B. 235.]

In the High Court of Justice.
Chancery Division.
[*Name of Judge.*]
Between A. B. and C. his wife, Plaintiffs,
and
E. F. and G. H., Defendants.

Statement of Defence of the above-named Defendants.

1. Shortly after the decease of the testator, the defendants, as his executors, possessed themselves of and converted into money the testator's personal estate, except his share in the colliery mentioned in the plaintiff's statement of claim. The moneys so arising were applied in payment of part of the testator's debts and funeral and testamentary expenses, but such moneys were not sufficient for the payment thereof in full. Defence.

2. The Paradise colliery was, at the testator's decease, worked by him in partnership with J. Y., and W. Y., and T. Y., both since deceased. No written articles of partnership had been entered into, and for many years the testator had not taken any part in the management of the said colliery, but it was managed exclusively by the other partners, and the defendants did not know with certainty to what share therein the testator was entitled.

3. Upon the death of the testator, the defendants endeavoured to ascertain the value of the testator's share in the colliery, but the other partners refused to give them any information. The defendants thereupon had the books of the colliery examined by a competent accountant, but they had been so carelessly kept that it was impossible to obtain from them any accurate information respecting the state of the concern; it was, however, ascertained that a considerable sum was due to the testator's estate.

4. Between the death of the testator and the beginning of the year 1874 the defendants made frequent applications to J. Y., W. Y., and T. Y. for a settlement of the accounts of the colliery. Such applications having proved fruitless, the defendants, in January, 1874, filed their bill of complaint in the Court of Chancery against J. Y., W. Y., and T. Y., praying for an account of the partnership dealings between the testator and the defendants thereto, and that the partnership might be wound up under the direction of the Court.

5. The said T. Y. died in the year 1874, and the suit was revived against J. P. and T. S., his executors. The suit is still pending.

6. As to the Paradise colliery, the defendants have acted to the best of their judgment for the benefit of the testator's estate, and they deny being under any liability in respect of the said colliery

not having been realised. They submit to act under the direction of the Court as to the further prosecution of the said suit and generally as to the realisation of the testator's interest in the said colliery.

7. With respect to the statements in the eighth paragraph of the statement of claim, the defendants say, that upon the death of the testator, they sold the whole of his furniture, linen, and china, and also all his plate, except a few silver teaspoons of very small value, which were taken possession of by his widow, and they applied the proceeds of such sale as part of the testator's personal estate, and they deny being under any liability in respect of such furniture, linen, china, and plate.

8. With respect to the statements in paragraph seven of the statement of claim, the defendants say that all moneys received by them, or either of them, on account of the testator's estate, were paid by them to their executorship account at the bank of Messrs. H. and Co., and until the sale of the testator's real estate took place as hereinafter mentioned, the balance to their credit was never greater than was necessary for the administration of the trusts of the testator's will, and they therefore were unable to make any such investment or accumulation as directed by the testator's will. No moneys belonging to the testator's estate have ever been mixed with the moneys of the defendants, or either of them, nor has any money of the testator's been employed in business since the testator's decease, except that his share in the said colliery, for the reason hereinbefore appearing, has not been got in.

9. In 1874, after the plaintiff C. B. had attained her age of 21 years the defendants sold the real estate of the testator for sums amounting to 15,080*l.*, and no part thereof remains unsold. They received the purchase-moneys in December, 1874, and on the day of , 1875, they paid such proceeds into Court to the credit of this action, with the exception of 500*l.* retained on account of costs incurred and to be incurred by them.

In the High Court of Justice. [1876. B. No. 235.]
Chancery Division.
[*Name of Judge.*]
Between A. B. and C. his wife, Plaintiffs,
and
E. F. and G. H., Defendants.

Reply.

The plaintiff joins issue with the defendants upon their defence.

No. 5.

AGENT.

[187 . B. No.]

In the High Court of Justice.
Division.
Writ issued 3rd August, 1875.
Between A. B. and Company, Plaintiffs,
and
E. F. and Company, Defendants.

Statement of Claim.

1. The plaintiffs are manufacturers of artificial manures, carrying on business at , in the county of . Claim.

2. The defendants are commission agents, carrying on business in London.

3. In the early part of the year , the plaintiffs commenced, and down to the 187 , continued to consign to the defendants, as their agents, large quantities of their manures for sale, and the defendants sold the same, and received the price thereof and accounted to the plaintiffs therefor.

4. No express agreement has ever been entered into between the plaintiffs and the defendants with respect to the terms of the defendants' employment as agents. The defendants have always charged the plaintiffs a commission at per cent. on all sales effected by them, which is the rate of commission ordinarily charged by del credere agents in the said trade. And the defendants, in fact, always accounted to the plaintiffs for the price, whether they received the same from the purchasers or not.

5. The plaintiffs contend that the defendants are liable to them as del credere agents, but if not so liable are under the circumstances herein-after mentioned liable as ordinary agents.

6. On the , the plaintiffs consigned to the defendants for sale a large quantity of goods, including tons of .

7. On or about the , the defendant sold tons of part of such goods to one G. H. for *l.*, at three months' credit, and delivered the same to him.

8. G. H. was not, at that time, in good credit and was in insolvent circumstances, and the defendants might, by ordinary care and diligence, have ascertained the fact.

9. G. H. did not pay for the said goods, but before the expiration of the said three months for which credit had been given was adjudicated a bankrupt, and the plaintiffs have never received the said sum of *l.*, or any part thereof.

The plaintiffs claim:—

1. Damages to the amount of *l.*
2. Such further or other relief as the nature of the case may require.

The plaintiffs propose that this action should be tried in the county of

[Title as in claim, omitting date of issue of writ.]

Statement of Defence.

Defence. 1. The defendants deny that the said commission of per cent. mentioned in paragraph 4 of the claim is the rate of commission ordinarily charged by del credere agents in the said trade, and say that the same is the ordinary commission for agents other than del credere agents, and they deny that they ever accounted to the plaintiffs for the price of any goods, except after they had received the same from the purchasers.

2. The defendants deny that they were ever liable to the plaintiffs as del credere agents.

3. With respect to the eighth paragraph of the plaintiffs' statement of claim, the defendants say that at the time of the said sale to the said G. H., the said G. H. was a person in good credit. If it be true that the said G. H. was then in insolvent circumstances (which the defendants do not admit), the defendants did not and had no reason to suspect the same, and could not by ordinary care or diligence have ascertained the fact.

[Title as in defence.]

Reply.

Reply. The plaintiffs join issue upon the defendants' statement of defence.

No. 6.

Bill of Exchange.

187 . B. No.

In the High Court of Justice,
Division.
Writ issued 3rd August, 1876.
Between A. B. and C. D., Plaintiffs,
and
E. F. and G. H., Defendants.

Statement of Claim.

Claim. 1. Messrs. M. N. & Co, on the day of drew a bill of exchange upon the defendants for *l.*, payable to the order of the said Messrs. M. N. & Co. three months after date, and the defendants accepted the same.

2. Messrs. M. N. & Co. indorsed the bill to the plaintiffs.

3. The bill became due on the , and the defendant has not paid it.

The plaintiffs claim:—

[Title.]

Statement of Defence.

Defence. 1. The bill of exchange mentioned in the statement of claim was drawn and accepted under the circumstances hereinafter stated, and except as hereinafter mentioned there never was any consideration for the acceptance or payment thereof by the defendants.

2. Shortly before the acceptance of the said bill it was agreed between the said Messrs. M. N. & Co., the drawers thereof, and the defendants, that the said Messrs. M. N. & Co. should sell and deliver to the defendants free on board ship at the port of 1,200 tons of coal during the month of , and that the defendants should pay for the same by accepting the said Messrs. M. N. & Co.'s draft for *l.* at six months.

3. The said Messrs. M. N. & Co. accordingly drew upon the defendants, and the defendants accepted the bill of exchange now sued upon.

4. The defendants did all things which were necessary to entitle them to delivery by the said Messrs. M. N. & Co. of the said 1,200 tons of coal under their said contract, and the time for delivery has long since elapsed; but the said Messrs. M. N. & Co. never delivered the same, or any part thereof, but have always refused to do so, whereby the consideration for the defendants' acceptance has wholly failed.

5. The plaintiffs first received the said bill, and it was first indorsed to them after it was overdue.

6. The plaintiffs never gave any value or consideration for the said bill.

7. The plaintiffs took the said bill with notice of the facts stated in the second, third, and fourth paragraphs hereof.

[Title.]

Reply.

Reply. 1. The plaintiff joins issue upon the defendants' statement of defence.

2. The plaintiff gave value and consideration for the said bill in manner following, that is to say, on the day of , 187 , the said Messrs. M. N. & Co. were indebted to the plaintiff in about *l.*, the balance of an account for goods sold from time to time by him to them. On that day

they ordered of the plaintiff further goods to the value of about *l.*, which last-mentioned goods have since been delivered by him to them. And at the time of the order for such last-mentioned goods it was agreed between Messrs. M. N. & Co. and the plaintiff, and the order was received upon the terms, that they should indorse and hand over to him the bill of exchange sued upon, together with various other securities on account of the said previous balance, and the price of the goods so ordered on that day. The said securities, including the bill sued upon, were thereupon on the same day indorsed and handed over to the plaintiff.

No. 7.

Bill of Exchange and Consideration.

187 . B. No.

In the High Court of Justice.

Division.

Writ issued 3rd August, 1876.

Between A. B. and C. D., Plaintiffs,

and

E. F. and G. H., Defendants.

Statement of Claim.

Claim. 1. The plaintiffs are merchants, factors, and commission agents, carrying on business in London.

2. The defendants are merchants and commission agents, carrying on business at Hong Kong.

3. For several years prior to the , 1875, the plaintiffs had been in the habit of consigning goods to the defendants for sale, as their agents; and the defendants had been in the habit of consigning goods to the plaintiffs for sale, as their agents; and each party always received the price of the goods sold by him for the other; and a balance was from time to time struck between the parties, and paid.

On the of , the moneys so received by the defendants for the plaintiffs, and remaining in their names, largely exceeded the moneys received by the plaintiffs for the defendants, and a balance of *l.* was accordingly due to the plaintiffs from the defendants.

the defendants a statement of the accounts between them, show-

4. On or about the , 1875, the plaintiffs sent to ing the said sum as the balance due to the plaintiffs from the defendants; and the defendants agreed to the said statement of accounts as correct, and to the said sum of *l.* as the balance due by them to the plaintiffs, and agreed to pay interest on such balance if time were given to them.

5. The defendants requested the plaintiffs to give them three months' time for payment of the said sum of *l.*, and the plaintiffs agreed to do so upon the defendants accepting the bills of exchange hereinafter mentioned.

6. The plaintiffs thereupon on the drew two bills of exchange upon the defendants, one for *l.* and the other for *l.*, both payable to the order of ths plaintiffs three months after date, and the defendants accepted the bills.

The said bills became due on the 187 , and the defendants have not paid the bills, or either of them, nor the said sum of *l.*

The plaintiffs claim :—

l. and interest to the date of judgment.

The plaintiffs propose that the action should be tried in London.

No. 8.

Damage to Goods on Board Ship.

In the High Court of Justice. 187 . B. No.
Division.
Writ issued [ ].

[THE "IDA."*]

Between A. B. and C. D., Plaintiffs,
and
E. F. and G. H., Defendants.

Statement of Claim.

[1. The "Ida" is a vessel of which no owner or part owner was, at the time of the institution of this cause, domiciled in England or Wales.]† Claim.

2. In the month of February, 1873, Messrs. L. and Company, of Alexandria, caused to be shipped 6,110 ardebs of cotton seed on board the said vessel, then lying in Port Said (Egypt), and the then master of the vessel received the same, to be carried from Port Said to Hull, upon the terms of three bills of lading, signed by the master, and delivered to Messrs. L. and Company.

3. The three bills of lading, being in form exactly similar to one another, were and are so far as is material, to the present case, in the words, letters and figures following, that is to say :—

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* In Admiralty action insert name of ship.

† A statement to this effect may be inserted if the action be under sec. 6 of the Admiralty Act, 1861.

"Shipped in good order and well conditioned by L. and Co., Alexandria (Egypt) in and upon the good ship called the 'Ida,' whereof is master for the present voyage Ambrozio Chiapella and now riding at anchor in the port of Port Said (Egypt) and bound for Hull, six thousand one hundred and ten ardebs cotton seed being marked and numbered as in the margin, and are to be delivered in the like good order and well-conditioned at the aforesaid Port of Hull (the act of God, the Queen's enemies, fire and all and every other dangers and accidents of the seas, rivers, and navigation of whatever nature and kind soever, save risk of boats so far as ships are liable thereto excepted), unto order or to assigns paying freight for the said goods at the rate of (19*s.*) say nineteen shillings sterling in full per ton of 20 cwt. delivered with 10*l.* gratuity. Other conditions as per charter-party, dated London, 4th October, 1872, with primage and average accustomed. In witness whereof the master or purser of the said ship hath affirmed to three bills of lading all of this tenor and date, the one of which three bills being accomplished the other two to stand void. Dated in Port Said (Egypt) 6th February, 1873. 100 dunnage mats. Fifteen working days remain for discharging."

4. The persons constituting the firm of Messrs. L. and Company are identical with the members of the plaintiffs' firm.

5. The vessel sailed on her voyage to Hull, and duly arrived there on or about the 7th day of May, 1873.

6. The cotton seed was delivered to the plaintiffs, but not in as good order and condition as it was in when shipped at Port Said; but was delivered to the plaintiffs greatly damaged.

7. The deterioration of the cotton seed was not occasioned by any of the perils or causes in the bills of lading excepted.

8. By reason of the premises the plaintiffs lost a great part of the value of the said cotton seed, and were put to great expense in and about keeping, warehousing, and improving the condition of the said cotton seed, and in and about having the same surveyed.

The plaintiffs claim the following relief:—

1. *l.* for damages [*and the condemnation of the said vessel and the defendant and his bail in the same]:
2. Such further relief as the nature of the case requires.

[Title.]

Defence.

Statement of:—

Defence. 1. They deny the truth of the allegations contained in the sixth, seventh, and eighth articles of the said petition.

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* This may be inserted if the action be an Admiralty action *in rem*.

2. The deterioration, if any, to the cotton seed was occasioned by the character and quality of the cotton seed when shipped on board the "Ida," and by the inherent qualities of the cotton seed, and by shipping water in a severe storm which occurred on the day of in latitude during the voyage, or by some or one of such causes.

[Title.]

Reply.

The plaintiffs join issue upon the statement of defence. Reply.

No. 9.

Bottomry.

In the High Court of Justice, 187. B. No.
Admiralty Division.
Writ issued [ ].

THE "ONWARD."

Between A. B. and C. D., Plaintiffs,
and
E. F. and G. H., Defendants.

Statement of Claim.

1. The "Onward," a ship of 933 tons register, or thereabouts, belonging to the United States of America, whilst on a voyage from Moulmein to Queenstown or Falmouth, for orders, and from thence to a port of discharge in the United Kingdom or on the Continent, between Bordeaux and Hamburg, both ports inclusive, laden with a cargo of teak timber, was compelled to put into Port Louis, in the island of Mauritius, in order to repair and refit. Claim.

2. The master of the "Onward," being without funds or credit at Port Louis, and being unable to pay the expense of the said repairs, and the necessary disbursements of the said ship at Port Louis, so as to enable the said ship to resume and prosecute her voyage, and after having communicated with his owners and with the owners and consignees of the cargo was compelled to resort to a loan of 24,369 dollars on bottomry of the said ship, her cargo and freight, for the purpose of enabling him to pay the said expenses and disbursements, which sum Messrs. H. and Company, of Port Louis, at the request of the master by public advertisement, advanced to the said master at and after the rate of 128 dollars for every 100 dollars advanced, and accordingly the said master, by a bond of bottomry, dated the 13th of October

1870, by him duly executed in consideration of the sum of 24,369 dollars Mauritius currency, paid to him by the said Messrs. H. and Company, bound himself and the said ship and her cargo, namely, about 940 tons of teak timber, and her freight, to pay unto Messrs. H. and Company, their assigns, or order or indorsees, the said sum of 24,369 dollars with the aforesaid maritime premium thereon, within twenty days next after the arrival of the "Onward," at her port of discharge, from the said intended voyage, the said payment to be made both in capital and interest in British sterling money, at and after the rate of 4*s*. for every dollar, with a condition, that in case the said ship and cargo should be lost, during her voyage from Port Louis to Queenstown, or Falmouth, for orders, and thence to her port of discharge in the United Kingdom, or on the Continent between Bordeaux and Hamburg, both ports inclusive, then that the said sum of 24,369 dollars, and maritime premium thereon, should not be recoverable.

3. The "Onward" subsequently proceeded on her voyage, and on the 7th of February, 1871, arrived with her cargo on board at the port of Liverpool, which was her port of discharge.

4. The bond was duly indorsed and assigned to the plaintiffs.

5. The ship has been sold by order of the Court, and the proceeds of the sale thereof have been brought into Court, and the freight has also been paid into Court.

6. The said sum of 24,369 dollars, with the maritime premium thereon, still remain due to the plaintiffs. By a decree made on the 10th of May, 1871, the Court pronounced for the validity of the bond, so far as regarded the ship and freight, and condemned the proceeds of the ship and freight in the amount due on the bond. The principal and premium still remain owing to the plaintiffs, and the proceeds of the said ship and her freight available for payment thereof are insufficient for such payment.

The plaintiffs claim:—

1. That the Court pronounce for the validity of the bond so far as regards the cargo:
2. That the Court condemn the defendants and their bail in so much of the amount due to the plaintiffs on the bond, for principal, maritime premium, and for interest, from the time when such principal and premium ought to have been paid, as the proceeds of the ship and freight available for payment of the bond shall be insufficient to satisfy and in costs:
3. Such further relief as the nature of the case requires.

[Title.]

Defence.

The defendants say that the—

Defence. 1. Several averments in the second article of the statement

contained are respectively untrue, except the averment that the bottomry bond therein mentioned was given and executed.

2. The "Onward" proceeded on the voyage in the first paragraph of the claim mentioned, under a charter-party made between the defendants and the owners of the vessel, who resided at New York. And the cargo in the said paragraph mentioned belonged to the defendants, and was shipped at Moulmein, by Messrs. T., F., and Company, of Moulmein, consigned to the defendants.

3. When the "Onward" put into Port Louis, the master placed his ship in the hands of Messrs. H. and Company, the persons in the second paragraph of the claim mentioned, and the repairs and disbursements in the said second article mentioned were made, directed, and expended under the orders, management, and on the credit of said Messrs. H. and Company, who at the outset contemplated the necessity of securing themselves by the hypothecation of the ship, freight, and cargo.

4. The master of the "Onward" and Messrs. H. and Company did not communicate to the said shippers of the cargo, or to the defendants, who carried on business at Glasgow, as the master knew the intention of hypothecating the ship, freight, and cargo, or the circumstances which might render such hypothecation advisable or necessary, but on the contrary, without reasonable cause or excuse, abstained from so doing, although the comparatively small value of the ship and freight to be earned, rendered it all the more important that such communication should have been made.

5. A reasonable and proper time was not allowed to elapse between the advertisements for the bottomry loan, and the acceptance of Messrs. H. and Company's offer to make such loan.

[Title.]

Reply.

Reply. 1. The plaintiffs say that the defendants, since the 31st day of December, 1868, have been the only persons forming the firm of T., F., and Co., of Moulmein, mentioned in the second paragraph of the defence.

2. After the master of the "Onward" put into Port Louis as aforesaid, he employed Messrs. H. and Company, in the claim mentioned, as his agents, and by his directions they by letter communicated to the defendants' firms at Moulmein and Glasgow the circumstances of the ship's distress, and the estimated amount of her repairs.

3. The said Messrs. H. and Company shortly after the said ship was put into their hands at Port Louis, offered the said master, in case he should require them to do so, to make the necessary advances for the ship's repairs, and to take his draft at

90 days' sight on Messrs. B. Brothers, of London, at the rate of 5 per cent. discount for the amount of the advances, together with a bottomry bond on ship, cargo, and freight as collateral security, the bond to be void should the draft be accepted. The said master, and the said Messrs. H. and Company, by letter, communicated to the owners of the "Onward" the circumstances of the said ship's distress, and the aforesaid offer of the said Messrs. H. and Company, and the said master by his letter requested the said owners to give him their directions on the subject. The said owners shortly after receiving such letters, by letter communicated with the defendants at Glasgow, and forwarded to them copies of the said last-mentioned letters of the said master, and of the said Messrs. H. and Company.

4. The defendants' houses at Moulmein and Glasgow respectively received the letters referred to in the second paragraph of this reply in time to have communicated with the said master at Port Louis before the giving of the said bottomry bond.

5. The defendants received the said copies of letters referred to in paragraph 4 of this reply, in time for them to have communicated thereon with the said master at Port Louis before the giving of the said bond.

6. The defendants did not at any time answer the said communications of the said Messrs. H. and Company, or in any way communicate or attempt to communicate with the said master, or to direct him not to give, or to prevent him from giving the said bottomry bond on the said cargo.

7. The said bond was duly advertised for sale, and was subsequently, and after a proper interval had elapsed, sold by auction in the usual way. There were several bidders at the sale, and the said Messrs. H. and Company were the lowest bidders in premium, and the said bond was knocked down to them. The said bond was not advertised for until the said ship was ready for sea, and up to that time the master of the said ship had expected to hear from her owners, and had hoped to be put in funds, and had not finally determined to resort to bottomry of the said ship, or her cargo or freight.

8. Save as herein appears the plaintiffs deny the truth of the several allegations contained in the said answer.

[NOTE.—The facts stated in this reply should, in general, be introduced by amendment into the statement of claim.]

[Title.]

Rejoinder.

Rejoinder. The defendants join issue upon the plaintiffs' reply.

No. 10.

Charter Party.

187 . B. No.

In the High Court of Justice,
Division.
Writ issued 3rd August, 1876.
Between A. B. and C. D., Plaintiffs,
and
E. F. and G. H., Defendants.

Statement of Claim.

1. The plaintiffs were, on the 1st August, 1874, the owners of the steamship "British Queen." Claim.

2. On the 1st August, 1874, the ship being then in Calcutta, a charter-party was there entered into between John Smith, the master, on behalf of himself and the owners of the said ship, of the one part, and the defendants of the other part.

3. By the said charter-party it was agreed, amongst other things, that the defendants should be entitled to the whole carrying power of the said steamship for the period of four months certain, commencing from the said 1st August, 1874, upon a voyage or voyages between Calcutta and Mauritius and back; that the defendants should pay for such use of the said steamship to the plaintiffs' agents at Calcutta, monthly, the sum of 1000*l.*; that the charter should terminate at Calcutta; and that if at the expiration of the said period of four months the said steamship should be upon a voyage, then the defendants should pay *pro rata* for the hire of the ship up to her arrival at Calcutta, and the complete discharge of her cargo there.

4. The "British Queen" made several voyages in pursuance of the said charter-party, and the first three monthly sums of 1000*l.* each were duly paid.

5. The period of four months expired on the 1st December, 1874, and at that time the steamship was on a voyage from Mauritius to Calcutta. She arrived at Calcutta on the 13th December, and the discharge of her cargo there was completed on the 16th December, 1874.

6. The plaintiffs' agents at Calcutta called upon the defendants to pay to them the fourth monthly sum of 1,000*l.*, and a sum of 500*l.* for the hire of the steamship from the 1st to the 16th December, 1874, but the defendants have not paid any part of the said sums.

The plaintiffs claim—

The sum of 1,500*l.*, and interest upon 1,000*l.*, part thereof, from the 1st December, 1874, until judgment.

The plaintiffs propose that this action should be tried in London.

[Title.]

Statement of Defence.

Defence

1. By the charter-party sued upon it was expressly provided that if any accident should happen to, or any repairs should become necessary to the engines or boilers of the said steamship, the time occupied in repairs should be deducted from the period of the said charter, and a proportionate reduction in the charter money should be made.

2. On the repairs became necessary to the engines and boilers of the steamship, and ten days were occupied in effecting such repairs.

3. On the an accident happened to the engines of the steamship at Mauritius, and two days were occupied in effecting the repairs necessary in consequence thereof.

4. The defendants are therefore entitled to a reduction in the charter money of 400*l.*

Counter-claim.

By way of set-off and counter-claim the defendants claim as follows:—

5. By the charter-party it was expressly provided that the charterers should furnish funds for the steamship's necessary disbursements, except in the port of Calcutta, without any commission or interest on any sum so advanced.

6. The defendants paid for the necessary disbursements of the ship in the port of Mauritius between the and the 1874, sums amounting in all to 625*l.* 14*s* 6*d.*

7. The charter-party also contained an express warranty that the steamship was at the date thereof capable of steaming nine knots an hour on a consumption of thirty tons of coal a day, and it was further provided by the charter-party that the charterers should provide coal for the use of the said steamship.

8. The steamship was at the date of the charter-party only capable of steaming less than eight knots to an hour, and that only on a consumption of more than thirty-five tons of coal a day.

9. In consequence of the matters mentioned in the last paragraph, the steamship finally arrived at Calcutta at least fifteen days later, and remained under charter at least fifteen days longer than she would otherwise have done. She was also during the whole period of the said charter at sea for a much larger number of days than she would otherwise have been, and consumed a much larger quantity of coal on each of such days than she would otherwise have done, whereby the defendants were obliged to provide for the use of the steamship much larger quantities of coal than they would otherwise have been.

The defendants claim—

l. damages in respect of the matters stated in this set-off and counter-claim.

[Title.]

Reply.

1. The plaintiff joins issue upon the second, third, and fourth paragraphs of the defendant's statement of defence. Reply.

2. With respect to the alleged set-off stated in paragraph 6, the plaintiff does not admit the correctness of the amount therein stated. And all sums advanced by them for disbursements were paid or allowed to them by the plaintiffs by deducting the amount thereof from the third monthly sum of 1,000*l.* paid (subject to such deduction to the plaintiffs' agents at Calcutta by the defendant on or about the 12th November, 1874.

3. With respect to the alleged breach of warranty and the alleged damages therefrom, stated in the seventh, eighth, and ninth paragraphs, the plaintiffs say that the steamship was at the date of the charter-party capable of steaming nine knots an hour on à consumption of thirty tons of coal a day. If the steamship did not, during the said charter, steam more than eight knots an hour, and that on a consumption of more than thirty-five tons a day, as alleged (which the plaintiffs do not admit), it was in consequence of the bad and unfit quality of the coals provided by the defendants for the ship's use.

[Title.]

Joinder of Issue.

The defendants join issue upon the plaintiffs' reply to their set-off and counter-claim. Rejoinder.

No. 11.

Collision.

187 . B. No.

In the High Court of Justice.
Admiralty Division.
Writ issued [ ].

THE "AMERICAN."

Between A. B. and C. D., Plaintiffs.
and
E. F. and G. H., Defendants.

Statement of Claim.

1. Shortly before 8 a.m. on the 9th of December, 1874, the brigantine "Katie," of 194 tons register, of which the plaintiffs were owners, manned by a crew of eight hands all told, whilst on a voyage from Dublin to St. John's, Newfoundland, in ballast, Claim.

was in latitude about 46° N., and longitude 40° 42′ W., by account.

2. The wind at such time was about W. by S., a strong breeze, and the weather was clear, and the "Katie" was under double-reefed mainsail, reefed mainstaysail, middle staysail, lower topsail, reefed fore staysail, and jib, sailing full and by on the port tack, heading about N.W. ½ N., and proceeding at the rate of about five knots and a half per hour.

3. At such time a steamship under steam and sail, which proved to be the screw steamship "American," was seen at the distance of three or four miles from the "Katie," broad on her port bow, and steering about E. or E. by S. The master of the "Katie" not having been able to take observations for several days, and her chronometer having run down, and the said master wishing to exchange longitudes with the "American," caused an ensign to be hoisted, and marked his longitude by account on a board which he exhibited over the port side. The "Katie" was kept full and by, and the "American" approached rapidly, and attempted to pass ahead of the "Katie," and caused immediate danger of collision, and although thereupon the helm of the "Katie" was put hard a-port and her mainsheet let go, the "American" with her stem struck the "Katie" on her port side, almost amidships, cutting her nearly in two, and the "Katie" sank almost immediately, her crew being saved by the steamer.

4. The "American" improperly neglected to keep clear of the "Katie."

5. The "American" improperly attempted to pass ahead of the "Katie."

6. The "American" improperly neglected to ease her engines, and improperly neglected to stop and reverse her engines in due time.

The plaintiff claims:—

1. That it may be declared that the plaintiffs are entitled to the damage proceeded for:
2. That the bail given by the defendants be condemned in such damage, and in costs:
3. That the accounts and vouchers relating to such damage be referred to the Registrar assisted by merchants to report the amount thereof:
4. Such further and other relief as the nature of the case may require.

[Title.]

Statement of Defence.

The defendants say as follows:—

Defence. 1. The "American" is a screw steamship, of 1,368 tons register, with engines of 200-horse power nominal, belonging to the port of

Liverpool, and at the time of the occurrences hereinafter mentioned was manned by a crew of 40 hands all told, laden with a cargo of general merchandise, and bound from Port-au-Prince in the West Indies to Liverpool.

2. About 8.5 a.m. on the 28th November, 1874, the "American" was in latitude 46° N., longitude 38° 16′ W., steering E. by S. true magnetic, making under all sail and steam about 12 knots an hour, the wind being about S.W. by S. true magnetic, blowing a strong breeze and the weather hazy, when a vessel, which afterwards proved to be the brigantine "Katie," was observed on the "American's" starboard bow about four miles distant, bearing about S.E. by E. true magnetic, close-hauled to the wind, and steering a course nearly parallel to that of the "American."

3. The "American" kept her course, and when the "Katie" was about three miles distant her ensign was observed by those on board the "American" run up to the main, and she was seen to have altered her course, and to be bearing down towards the "American." The "American's" ensign was afterwards run up, and her master, supposing that the "Katie" wanted to correct her longitude, or to speak the "American," continued on his course, expecting that the "Katie," when she had got sufficiently close to speak or show her black board over her starboard side, would luff to the wind, and pass to windward of the "American."

4. The master of the "American" watched the "Katie" as she continued to approach the "American," and when she had approached as near as he deemed it prudent for her to come, he waved to her to luff, and shortly afterwards, on his observing her to be attempting to cross the bows of the "American," the helm of the latter was immediately put to starboard, and engines stopped and reversed full speed; but notwithstanding, the "American" with her stem came into collision with the port side of the "Katie," a little forward of the main rigging.

5. The "American's" engines were then stopped, and when the crew of the "Katie" had got on board of the "American," the latter's engines were reversed to get her clear of the "Katie," which sunk under the "American's" bows.

6. The "Katie" improperly approached too close to the "American."

7. Those on board the "Katie" improperly neglected to luff, and to pass to windward of the "American."

8. Those on board the "Katie" improperly attempted to cross the bows of the "American."

9. Those on board the "Katie" improperly ported her helm before the said collision.

10. Those on board the "Katie" improperly neglected to starboard her helm before the said collision.

[Title.]

Reply.

Reply. The plaintiffs join issue upon the defendants' statement of defence.

No. 12.

Equipment of Ship.

187 . . B. No.

In the High Court of Justice,
Admiralty Division.

Writ issued [ ].

THE "TWO ELLENS."

Between A. B. and C. D., Plaintiffs.
and
E. F., Defendant.

Statement of Claim.

Claim. 1. The said vessel was and is a British colonial vessel, belonging to the Port of Digby, in Nova Scotia, of which no owner or part owner was at the time of the commencement of this action or is domiciled in England or Wales.

2. At the time of commencement of this action the said vessel was under arrest at this Court.

3. About the month of February, 1868, the said vessel was lying in the port of London, in need of repairs, and of being equipped and supplied with certain other necessaries.

4. By the order of Messrs. K. L., who were duly authorised, the plaintiffs equipped and repaired the said vessel as she needed, and provided the vessel with necessaries, and there is now due to the plaintiffs for such necessary repairing and equipping, and other necessaries, the sum of 305*l.* 3*s.*, together with interest thereon from the 19th day of February, 1868.

The plaintiffs claim :—

1. Judgment for the said sum of 305*l.* 3*s.*, with such interest thereon as aforesaid until judgment :
2. The condemnation of the ship and the defendant and his bail therein and in the costs of this suit :
3. Such further relief as the nature of the case requires.

[Title].

Statement of Defence.

Defence. 1. By an instrument of mortgage, in the form and recorded as prescribed by the Merchant Shipping Act, 1854, bearing date the 9th of March, 1867, and executed by C. M., blacksmith, D. F.,

master mariner, and W. H., farmer, all of Weymouth, in the county of Digby, in Nova Scotia, the registered owners of 64/64ths parts or shares in the vessel, the said C. M., D. F., and W. H. mortgaged 64/64ths parts or shares in the vessel, of which the said D. F. was also master, to G. T., of Nova Scotia, in consideration of the sum of 5,000 dollars advanced by him to the said owners, and for the purpose of securing the repayment by them to him of the said sum with interest thereon.

2. By an instrument of transfer, dated the 16th of July, 1868, in the form prescribed by the said Act, and executed by G. T. in consideration of the sum of 5,000 dollars to G. T. paid by the defendant, G. T. transferred to the defendant the mortgage security.

3. The said sum of 5,000 dollars, with interest thereon, still remains due on the said security.

4. The vessel was not under the arrest of this Court at the time of the commencement of this action.

5. The vessel did not need to be equipped or repaired as in the fourth paragraph of the plaintiff's claim mentioned, and she did not at the time of the supply of the articles referred to in the said fourth paragraph as "necessaries" stand in need of such articles. On the contrary, the said vessel could have gone to sea and proceeded on and prosecuted her voyage without such equipments, repairs, and articles referred to as aforesaid, and such equipments, repairs, and other articles were done and effected and supplied for the purpose of reclassing the said vessel, and not for any other purpose; and the claim of the plaintiffs is not a claim for necessaries within the meaning of the Admiralty Court Act, 1861, s. 5.

6. The alleged necessaries were not supplied on the credit of the said vessel, but upon the personal credit of J. B., who was the broker for the vessel, and upon the agreement that the plaintiffs were not to have recourse to the vessel.

7. The defendant did not, nor did G. T., in any way order, authorise, or become liable for, and neither of them is in any way liable in respect of the said alleged supplies or any part thereof, and the said vessel was at the time of the commencement of this action and she still is of a less value than the amount which, irrespective of the sums referred to in the next article of this answer, is due to the defendant on the said mortgage security.

8. The defendant, in order to save the vessel from being sold by this Court at the instance of certain of her mariners having liens on the said vessel for their wages, has been compelled to pay the said wages, and he claims, if necessary, to be entitled to stand in the place of such mariners, or to add the amounts so paid by him for wages to the amount seccured by the said mortgage, and to have priority in respect thereof over the claim of the plaintiffs.

[Title.]

Reply.

Reply. 1. The plaintiffs admit that 64/64th shares in the said ship the "Two Ellens" were on or about the 9th day of March, 1867, mortgaged by the said C. M., D. F., and W. H., all of Weymouth, in the county of Digby, Nova Scotia, to the said G. T.

2. Save as afore-mentioned, all the several averments in the said Answer contained are respectively untrue.

3. If there was or is any such instrument of transfer as is mentioned in the second article of the said Answer, the same has never been registered according to the provisions of the Merchant Shipping Act, 1854.

4. The said G. T. has never been domiciled in or resided in the United Kingdom, and is now resident in Nova Scotia, and the registered owners of the said vessel in the first paragraph of the said Defence mentioned were always and are domiciled in Nova Scotia, and resident out of the United Kingdom.

[Title.]

Rejoinder.

Rejoinder. The defendant joins issue upon the third and fourth paragraphs of the Reply.

No. 13.

False Imprisonment.

187 . B. No.

In the High Court of Justice,
Division.
Writ issued 3rd August, 1876.
Between A. B., Plaintiff,
and
E. F., Defendant.

Statement of Claim.

Claim. 1. The plaintiff is a journeyman painter. The defendant is a builder, having his building yard, and carrying on business at and for six months before and up to the 22nd August, 187 , the plaintiff was in the defendant's employment as a journeyman painter.

2. On the said 22nd August, 187 , the plaintiff came to work as usual in the defendant's yard, at about six o'clock in the morning.

3. A few minutes after the plaintiff had so come to work, the defendant's foreman X. Y., who was then in the yard, called the plaintiff to him, and accused the plaintiff of having on the previous day stolen a quantity of paint, the property of the defendant, from the yard. The plaintiff denied the charge, but X. Y. gave the plaintiff into the custody of a constable, whom he had previously sent for, upon a charge of stealing paint.

4. The defendant was present at the time when the plaintiff was given into custody, and authorised and assented to his being so given into custody; and in any case X. Y., in giving him into custody, was acting within the scope and in the course of his employment as the defendant's foreman, and for the purposes of the defendant's business.

5. The plaintiff upon being so given into custody, was taken by the said constable a considerable distance through various streets, on foot, to the police station, and he was there detained in a cell till late in the same afternoon, when he was taken to the police court, and the charge against him was heard before the magistrate then sitting there, and was dismissed.

6. In consequence of being so given into custody, the plaintiff suffered annoyance and disgrace, and loss of time and wages, and loss of credit and reputation, and was thereby unable to obtain any employment or earn any wages for three months.

The plaintiff claims *l.* damages.

The plaintiff proposes that this action should be tried in Middlesex.

[Title.]

Statement of Defence.

Defence.

1. The defendant denies that he was present at the time when the plaintiff was given into custody, or that he in any way authorised or assented to his being given into custody. And the said X. Y., in giving the plaintiff into custody, did not act within the scope or in the course of his employment as the defendant's foreman, or for the purposes of the defendant's business.

2. At some time about five or six o'clock on the being the evening before the plaintiff was given into custody, a large quantity of paint had been feloniously stolen by some person or persons from a shed upon the defendant's yard and premises.

3. At about 5.30 o'clock on the evening of the the plaintiff, who had left off work about an hour previously, was seen coming out of the shed when no one else was in it, although his work lay in a distant part of the yard from and he had no business in or near the shed. He was then seen to go to the back of a stack of timber in another part of the yard. Shortly

afterwards the paint was found to have been stolen, and it was found concealed at the back of the stack of timber behind which the plaintiff had been seen to go.

4. On the following morning, before the plaintiff was given into custody, he was asked by X. Y. what he had been in the shed and behind the stack of timber for, and he denied having been in either place. X. Y. had reasonable and probable cause for suspecting, and did suspect that the plaintiff was the person who had stolen the paint, and thereupon gave him into custody.

[Title.]

Reply.

Reply. The plaintiff joins issue upon the defendant's statement of defence.

No. 14.

Foreclosure.

1876. W. No. 672.

In the High Court of Justice,
Chancery Division.
[*Name of Judge.*]
Writ issued [ ].
Between R.W., Plaintiff,
and
O. S. and J. B., Defendants.

Statement of Claim.

Claim. 1. By an indenture dated the 25th of March, 1867, made between the defendant O. S. of the one part, and the plaintiff of the other part, the defendant O. S., in consideration of the sum of 10,000*l.* paid to him by the plaintiff, conveyed to the plaintiff and his heirs a farm containing 398 acres, situate in the parish of B., in the county of D., with all the coal mines, seams of coal, and other mines and minerals in and under the same, subject to a proviso for redemption of the same premises on payment by the defendant O. S., his heirs, executors, administrators, or assigns, to the plaintiff, his executors, administrators, or assigns, of the sum of 10,000*l.*, with interest for the same in the meantime at the rate of 4*l.* per cent. per annum on the 25th day of September then next.

2. By an indenture dated the 1st day of April, 1867, made between the defendant O. S. of the one part, and the defendant J. B. of the other part the defendant O. S. conveyed to the defendant

J. B. and his heirs the hereditaments comprised in the hereinbefore stated security of the plaintiff, or some parts thereof, subject to the plaintiff's said security, and subject to a proviso for redemption of the same premises on payment by the defendant O. S., his heirs, executors, administrators, or assigns, to the defendant J. B., his executors, administrators, or assigns, of the sum of 15,000*l.*, with interest for the same in the meantime at the rate of 5*l.* per cent. per annum.

3. The whole of the said sum of 10,000*l.*, with an arrear of interest thereon, remains due to the plaintiff on his said security.

The plaintiff claims as follows:—

1. That an account may be taken of what is due to the plaintiff for principal money and interest on his said security, and that the defendants may be decreed to pay to the plaintiff what shall be found due to him on taking such account, together with his costs of this action, by a day to be appointed by the Court, the plaintiff being ready and willing, and hereby offering, upon being paid his principal money, interest, and costs, at such appointed time, to convey the said mortgaged premises as the Court shall direct.
2. That in default of such payment the defendants may be foreclosed of the equity of redemption in the mortgaged premises.
3. Such further or other relief as the nature of the case may require.

1876. W. 672.

In the High Court of Justice.
Chancery Division.
[*Name of Judge.*]
Between R. W., Plaintiff,
and
O. S. and J. B., Defendants,
(by original action,)
And between the said O. S., Plaintiff,
and
The said R. W. and J. B., and J. W., Defendants,
(by counter-claim.)

The Defence and Counter-claim of the above-named O. S.

Defence.

1. This defendant does not admit that the contents of the indenture of the 25th of day of March, 1867, in the plaintiff's statement of complaint mentioned, are correctly stated therein.

2. The indenture of the 1st day of April, 1867, in the statement of claim mentioned, was not a security for the sum of 15,000*l.*

and interest at 5*l.* per cent. per annum, but for the sum of 14,000*l.* only, with interest at the rate of 4*l.* 10s. per cent. per annum.

3. This defendant submits that under the circumstances in his counter-claim mentioned, the said indentures of the 25th day of March, 1867, and the 1st day of April, 1867, did not create any effectual security upon the mines and minerals in and under the lands in the same indentures comprised, and that the same mines and minerals ought to be treated as excepted out of the said securities.

Counter-claim.

And by way of counter-claim this defendant states as follows:—

1. At the time of the execution of the indenture next hereinafter stated, J. C. A. was seised in fee simple in possession of the lands described in the said indentures, and the mines and minerals in and under the same.

2. By indenture dated the 24th of March, 1860, made betweeen the said J. C. A. of the first part, E. his wife, then E. S., spinster, of the second part, and this defendant and the above-named J. W. of the third part, being a settlement made in contemplation of the marriage, shortly after solemnized, between the said J. C. A. and his said wife, the said J. C. A. granted to this defendant and the said J. W., and their heirs, all the coal mines, beds of coal, and other the mines and minerals under the said lands, with such powers and privileges as in the now-stating indenture mentioned, for the purpose of winning, working, and getting the same mines and minerals, to hold the same premises to this defendant and the said J. W. and their heirs to the use of the said J. C. A., his heirs and assigns, till the solemnization of the said marriage, and after the solemnization thereof to the use of this defendant and the said J. W., their executors and administrators, for the term of 500 years, from the day of the date of the now-stating indenture, upon the trusts therein-mentioned, being trusts for the benefit of the said J. C. A., and his wife and the children of their marriage, and from and after the expiration or other determination of the said term of 500 years, and in the meantime subject thereto, to the use of the said J. C. A., his heirs and assigns, for ever.

3. By indenture dated the 12th of May, 1860, made between the said J. C. A. of the one part, and W. N. of the other part, the said J. C. A. granted to the said W. N. and his heirs the said lands, except the coal mines, beds of coal, and other mines and minerals thereunder, to hold the same premises unto and to the use of the said W. N., his heirs and assigns for ever, by way of mortgage, for securing

the payment to the said W. N., his executors, administrators, or assigns, of the sum of 26,000*l.*, with interest as therein mentioned.

4. On the 14th of January, 1864, the said J. C. A. was adjudicated a bankrupt, and shortly afterwards J. L. was appointed creditor's assignee of his estate.

5. Some time after the said bankruptcy, the said W. N., under a power of sale in his said mortgage deed, contracted with this defendant f or the absolute sale to this defendant of the property comprised in his said security for an estate in fee simple in possession, free from incumbrances, for the sum of 26,000*l.*, and the said J. L., as such assignee as aforesaid, agreed to join in the conveyance to this defendant for the purpose of signifying his assent to such sale.

6. By indenture dated the 1st of September, 1866, made between the said W. N. of the first part, the said J. L. of the second part, the said J. C. A. of the third part, and this defendant of the fourth part, reciting the said agreement for sale, and reciting that the said J. L., being satisfied that the said sum of 26,000*l.* was a proper price, had, with the sanction of the Court of Bankruptcy, agreed to confirm the said sale, it was witnessed that in consideration of the sum of 26,000*l.*, with the privity and approbation of the said J. L., paid by this defendant to the said W. N., he the said W. N. granted, and the said J. C. A. ratified and confirmed to this defendant and his heirs, all the hereditaments comprised in the said security of the 12th day of May, 1860, with their rights, members, and appurtenances, and all the estate, right, title, and interest of them, the said W. N. and J. C. A. therein, to hold the same premises unto and to the use of this defendant, his heirs and assigns for ever.

7. The sale to this defendant was not intended to include anything not included in the security of the 12th of May, 1860, and the said J. L. only concurred therein to signify his approval of the said sale, and did not purport to convey any estate vested in him; and the lastly herein-before stated indenture did not vest in this defendant any estate in the said mines and minerals.

8. The plaintiff and the defendant J. B. respectively had before they had advanced to this defendant the moneys lent by them on their securities in the plaintiff's claim mentioned, full notice that the mines and minerals under

the said lands did not belong to this defendant. This fact appeared on the abstracts of title delivered to them before the preparation of their said securities. A valuation of the property made by a surveyor was furnished to them respectively on behalf of this defendant before they agreed to advance their money on their said securities; but although the said lands are in a mineral district, the mines and minerals were omitted from such valuation, and they respectively knew at the time of taking their said securities that the same did not include any interest in their mines and minerals.

9. At the time when the securities of the plaintiff and the defendant J. B. were respectively executed, the plaintiff and the defendant J. B. respectively had notice of the said indenture of settlement of the 24th day of March, 1860.

10. At the time when the plaintiff's security was executed, the mines and minerals under the said lands, with such powers and privileges as aforesaid, were vested in this defendant and the said J. W. for the residue of the said term of 500 years, and subject to the said term, the inheritance in the same mines, minerals, powers, and privileges was vested in the said J. L. as such assignee as aforesaid.

11. The said security to the plaintiff was by mistake framed so as to purport to include the mines and minerals under the said lands, and by virtue thereof the legal estate in moiety of the said mines and minerals became and now is vested in the plaintiff for the residue of the said term of 500 years.

The defendant O. S. claims as follows:—

1. That it may be declared that neither the plaintiff nor the defendant J. B. has any charge or lien upon that one undivided moiety, which in manner aforesaid became vested in the plaintiff for the residue of the said term of 500 years, of and in the mines and minerals in and under the lands mentioned in the plaintiff's said security.

2. That it may be declared that the said mines and minerals, rights, and privileges, which by the said indenture of settlement were vested in the defendant O. S. and the said J. W. for the said term of 500 years, upon trust as therein mentioned, ought to be so conveyed and assured as that the same may become vested in the defendant O. S. and the said J. W. for all the residue of the said term upon the trusts of the said settlement.

3. That the said R. W. and J. W. may be decreed to execute all such assurances as may be necessary for giving effect to the declaration secondly herein-before prayed.
4. To have such further or other relief as the nature of the case may require.

1876. W. 672.

In the High Court of Justice.
Chancery Division.
[*Name of Judge.*]
Between R. W., Plaintiff,
and
O. S. and J. B., Defendants,
(by original action),
And between the said O. S., Plaintiff,
and
The said R. W., and J. B., and J. W., Defendants,
(by counter-claim).

The Reply of the Plaintiff R. W.

Reply. 1. The plaintiff joins issue with the defendants upon their several defences, and in reply to the statements alleged by the defendant O. S., by way of counter-claim, the plaintiff says as follows:—

1. The plaintiff does not admit the execution of any such indenture as is stated in the said counter-claim to bear date the 24th of March, 1860.
2. The plaintiff does not admit that the indenture of the 12th of May, 1860, is stated correctly in the statement of claim.
3. When the defendant O. S., in the year 1866, applied to the plaintiff to advance him the sum of 10,000*l.*, he offered to the plaintiff as a security the lands which were afterwards comprised in the indenture of the 25th of March, 1867, including the mines and minerals which he now alleges were not to form part of the security, and the plaintiff agreed to lend the said sum upon the security of the said land, including such mines and minerals. During the negotiation for the said loan a valuation of the property to be included in the mortgage was delivered to the plaintiff on behalf of the said defendant. Such valuation included the mines and minerals; and the plaintiff consented to make the loan on the faith of such valuation. The plaintiff did not know when he took his security that it did not include any interest in the said mines and minerals; on the contrary, he

believed that the entirety of such mines and minerals was to be included therein.

4. The plaintiff does not admit the contents of the indenture of the 1st of September, 1866, to be as alleged, or that it was so framed as not to include the said mines and minerals, or that it was not intended to include anything not included in the security of the 12th of May, 1860, or that J. L. in the counter-claim named only concurred therein to signify his approval of the said sale, and did not purport to convey any estate vested in him.
5. Save so far as the plaintiff's solicitor may have had notice by means of the abstract of title that the mines and minerals under the said lands did not belong to the defendant O. S., the plaintiff had not any notice thereof, and he does not admit that it appeared from the abstract of title that such was the case. The mines were not omitted from any valuation delivered to the plaintiff as mentioned in the counter-claim.
6. The plaintiff admits that when he took his security he was aware that there was indorsed on the deed by which the said lands were conveyed by J. C. A. in the counter-claim named a notice of a settlement of 24th March, 1860, but he had no further or other notice thereof, and though his solicitor inquired after such settlement none was ever produced.
7. The plaintiff submits that if it shall appear that no further interest in the said mines and minerals was conveyed to him by his said security than one undivided moiety of a term of 500 years therein, as alleged by the said counter-claim, such interest is effectually included in the plaintiff's said security, and that he is entitled to foreclose the same.

No. 15.

Fraud.

187 . B. No.

In the High Court of Justice,
Division.
Writ issued 3rd August, 1876.
Between A. B., Plaintiff,
and
E. F., Defendant.

Statement of Claim.

Claim.

1. In or about March, 1875, the defendant caused to be inserted in the *Daily Telegraph* newspaper an advertisement, in which he offered for sale the lease, fixtures, fittings, goodwill, and stock-in-trade of a baker's shop and business, and described the same as an increasing business, and doing twelve sacks a week. The advertisement directed application for particulars to be made to X. Y.

2. The plaintiff having seen the advertisement applied to X. Y., who placed him in communication with the defendant, and negotiations ensued between the plaintiff and the defendant for the sale to the plaintiff of the defendant's bakery at with the lease, fixtures, fittings, stock-in-trade, and goodwill.

3. In the course of these negotiations the defendant repeatedly stated to the plaintiff that the business was a steadily increasing business, and that it was a business of more than 12 sacks a week.

4. On the 5th of April, 1875, the plaintiff, believing the said statements of the defendant to be true, agreed to purchase the said premises from the defendant for 500*l.*, and paid to him a deposit of 200*l.* in respect of the purchase.

5. On the 15th of April the purchase was completed, an assignment of the lease executed, and the balance of the purchase money paid. On the same day the plaintiff entered into possession.

6. The plaintiff soon afterwards discovered that at the time of the negotiations for the said purchase by him and of the said agreement, and of the completion thereof, the said business was and had long been a declining business; and at each of those times, and for a long time before, it had never been a business of more than 8 sacks a week. And the said premises were not of the value of 500*l.*, or any saleable value whatever.

7. The defendant made the false representations hereinbefore mentioned, well knowing them to be false, and fraudulently, with the intention of inducing the plaintiff to make the said purchase on the faith of them.

The plaintiff claims *l.* damages.

[Title.]

Statement of Defence.

Defence.

1. The defendant says that at the time when he made the representations mentioned in third paragraph of the statement of claim, and throughout the whole of the transactions between the plaintiff and defendant, and down to the completion of the purchase and the relinquishment by the defendant of the said shop and business to the plaintiff, the said business was an increasing business,

and was a business of over 12 sacks a week. And the defendant denies the allegation of the sixth paragraph of the statement of claim.

2. The defendant repeatedly during the negotiations told the plaintiff that he must not act upon any statement or representation of his, but must ascertain for himself the extent and value of the said business. And the defendant handed to the plaintiff for this purpose the whole of his books, showing fully and truthfully all the details of the said business, and from which the nature, extent, and value thereof could be fully seen, and those books were examined for that purpose by the plaintiff, and by an accountant on his behalf. And the plaintiff made the purchase in reliance upon his own judgment, and the result of his own inquiries and investigations, and not upon any statement or representation whatever of the defendant.

[Title.]

Reply.

Reply. The plaintiff joins issue upon the defendant's statement of defence.

No. 16.

GUARANTEE.

187 . B. No.

In the High Court of Justice,
Division.
Writ issued 3rd August, 1876.
Between A. B and C. D., Plaintiffs,
and
E. F. and G. H., Defendants.

Statement of Claim.

Claim. 1. The plaintiffs are brewers, carrying on their business at under the firm of X. Y. & Co.

2. In the month of March, 1872, M. N. was desirous of entering into the employment of the plaintiffs as a traveller and collector, and it was agreed between the plaintiffs and the defendant and M. N., that the plaintiffs should employ M. N. upon the defendant entering into the guarantee hereinafter mentioned.

3. An agreement in writing was accordingly made and entered into, on or about the 30th March, 1872, between the plaintiffs and the defendant, whereby in consideration that the plaintiffs would employ M. N. as their collector, the defendant agreed that he would be answerable for the due accounting by M. N. to the

plaintiffs for and the due payment over by him to the plaintiffs of all moneys which he should receive on their behalf as their collector.

4. The plaintiffs employed M. N. as their collector accordingly, and he entered upon the duties of such employment, and continued therein down to the 31st of December, 1873.

5. At various times between the 29th of September and the 25th of December, 1873, M. N. received on behalf of the plaintiffs and as their collector sums of money from debtors of the plaintiffs amounting in the whole to the sum of 950*l.*; and of this amount M. N. neglected to account for or pay over to the plaintiffs sums amounting in the whole to 227*l.*, and appropriated the last-mentioned sums to his own use.

6. The defendant has not paid the last-mentioned sums, or any part thereof to the plaintiffs.

The plaintiffs claim:—

No. 17.

Interest Suit (Probate).

187 . B. No.

In the High Court of Justice,
Probate Division.

Between A. B., Plaintiff,
and
C. D., Defendant.

Statement of Claim.

Claim. 1. M. N., late of No. High Street, Putney, in the county of Surrey, grocer, deceased, died on or about the day of , at No. 1, High Street, Putney, aforesaid, a widower, without child, parent, brother or sister, uncle or aunt, nephew or niece.

2. The plaintiff is the cousin-german, and one of the next-of-kin of the deceased.

The plaintiff claims:—

That the Court decree to him a grant of letters of administration of the personal estate and effects of the said deceased as his lawful cousin-german, and one of his next-of-kin.

[Title.]

Defence.

Defence. 1. The defendant admits that M. N. died a widower, without child, parent, brother or sister, uncle or aunt, or niece, but he denies that he died without nephew.

2. The deceased had a brother named G. B., who died in his lifetime.

3. G. B. was married to E. H., in the parish church of in the county of on the day of , and had issue of such marriage, the defendant, who was born in the month of , and is the nephew and next-of-kin of the deceased.

The defendant therefore claims:—

That the Court pronounce that he is the nephew and next-of-kin of the deceased, and as such entitled to a grant of letters of administration of the personal estate and effects of the deceased.

[Title.]

Reply.

Reply. 1. The plaintiff denies that G. B. was married to E. H.

2. He also denies that the defendant is the issue of such marriage.

No. 18.

Landlord and Tenant.

187 . B. No.

In the High Court of Justice.

Division.

Writ issued 3rd August, 1876.

Between A. B., Plaintiff,

and

C. D., Defendant.

Statement of Claim.

Claim. 1. On the day of the plaintiff, by deed, let to the defendant a house and premises, No. 52, Street, in the City of London, for a term of twenty-one years from the day of , at the yearly rent of 120*l.*, payable quarterly.

2. By the said deed the defendant covenanted to keep the said house and premises in good and tenantable repair.

3. The said deed also contained a clause of re-entry, entitling the plaintiff to re-enter upon the said house and premises, in case the rent thereby reserved whether demanded or not, should be in arrear for twenty-one days, or in case the defendant should make default in the performance of any covenant upon his part to be performed.

4. On the 24th June, 187 , a quarter's rent became due, and on the 29th September, 187 , another quarter's rent became due;

on the 21st October, 187 , both had been in arrear for twenty-one days, and both are still due.

5. On the same 21st October, 187 , the house and premises were not and are not now in good or tenantable repair, and it would require the expenditure of a large sum of money to reinstate the same in good and tenantable repair, and the plaintiff's reversion is much depreciated in value.

The plaintiff claims:—

1. Possession of the said house and premises.
2. *l.* for arrears of rent.
3. *l.* damages for the defendant's breach of his covenant to repair.
4. *l.* for the occupation of the house and premises from the 29th of September, 187 , to the day of recovering possession.

The plaintiff proposes that this action should be tried in London.

No. 19.

Necessaries for Ship.

187 . B. No.

In the High Court of Justice,
Admiralty Division.
Writ issued [ ].

THE "ENTERPRISE."

Between A. B. and C. D., Plaintiffs,
and
E. F. and G. H., Defendants.

Statement of Claim.

Claim.

1. The plaintiffs were at the time hereinafter stated and are engineers and ironfounders, carrying on business at Liverpool, in the County of Lancaster.

2. In the month of January, 1872, whilst the above-named steamship "Enterprise," belonging to the port of London, was in the port of Liverpool, the plaintiffs, having received orders from the master in that behalf, executed certain necessary work to her and supplied her with certain necessary stores and materials, and caused her to be supplied upon their credit with certain necessary work, labour, materials, and necessaries, and thereby supplied the said ship with necessaries within the meaning of the fifth section of the Admiralty Court Act, 1861.

3. There is due to the plaintiffs in respect of such supply of necessaries to the said ship the sum of 577*l.* 2*s.* 6*d.*, and the

plaintiffs cannot obtain payment thereof without the assistance of the Court.

The plaintiff's claim :—

1. Judgment pronouncing for the claim of the plaintiffs:
2. The condemnation of the defendants and their bail therein, with costs:
3. A reference, if necessary, of the claim of the plaintiffs to the registrar, assisted by assessors, to report the amount thereof:
4. Such further relief as the nature of the case requires.

[Title.]

Defence.

Defence. 1. The defendants deny the allegations contained in the third paragraph of the statement of claim.

2. The defendants admit that the plaintiffs executed certain work to the said ship, and supplied her with certain materials, but they say, that a portion of the work so executed was executed badly and insufficiently, and of the materials so supplied, some were bad and insufficient, and a portion of the work in the claim mentioned was done in and about altering and endeavouring to make good such bad and insufficient work and materials. The defendant has paid in respect of the work and materials in the claim mentioned the sum of 356*l.* 17*s.* 9*d.*, and the said sum is sufficient to satisfy the claims of the plaintiffs.

3. The defendants deny the allegations contained in the second paragraph of the claim, so far as they relate to any claim beyond the said sum of 356*l.* 17*s.* 9*d.*, and say that if the plaintiffs did execute any work or did supply any materials other than the work and materials mentioned in the second paragraph of this defence, such work was not necessary work, and such materials were not necessary materials, within the meaning of the fifth section of the Admiralty Court Act, 1861, and were not supplied in such circumstances as to render the defendants liable to pay for the same.

[Title.]

Reply.

Reply 1. The plaintiffs join issue upon the statement of defence.

No. 20.

NEGLIGENCE.

187 . B. No.

In the High Court of Justice,
Division.
Writ issued 3rd August, 1876.
Between A. B., Plaintiff,
and
E. F., Defendant.

Statement of Claim.

Claim.

1. The plaintiff is a shoemaker carrying on business at The defendant is a soap and candle manufacturer, of

2. On the 23rd May, 1875, the plaintiff was walking eastward, along the south side of Fleet Street, in the City of London, at about three o'clock in the afternoon. He was obliged to cross Street, which is a street running into Fleet Street at right angles on the south side. While he was crossing this street, and just before he could reach the foot pavement on the further side thereof, a two-horse van of the defendant's, under the charge and control of the defendant's servants, was negligently, suddenly, and without any warning turned at a rapid and dangerous pace out of Fleet Street into Street. The pole of the van struck the plaintiff and knocked him down, and he was much trampled by the horses.

2. By the blow and fall and trampling the plaintiff's left arm was broken, and he was bruised and injured on the side and back, as well as internally; and in consequence thereof the plaintiff was for four months ill and in suffering, and unable to attend to his business, and incurred heavy medical and other expenses, and sustained great loss of business and profits.

The plaintiff claims *l.* damages.

[Title.]

Statement of Defence.

Defence.

1. The defendant denies that the van was the defendant's van, or that it was under the charge or control of the defendant's servant. The van belonged to Mr. John Smith, of , a carman and contractor employed by the defendant to carry and deliver goods for him; and the persons under whose charge and control the said van was were the servants of the said Mr. John Smith.

2. The defendant does not admit that the van was turned out of Fleet Street, either negligently, suddenly, or without warning, or at a rapid or dangerous pace.

3. The defendant says, that the plaintiff might and could by the exercise of reasonable care and diligence, have seen the van approaching him, and avoided any collision with it.

4. The defendant does not admit the statements of the third paragraph of the statement of claim.

[Title.]

Reply.

Reply. The plaintiff joins issue upon the defendant's statement of defence.

No. 21.

Possession of Ship.

187 . B. No.

In the High Court of Justice,
Admiralty Division.
Writ issued [ ].

THE "LADY OF THE LAKE."

Between A. B., Plaintiff,
and
E. F., Defendant.

Statement of Claim.

Claim. 1. On or about the 15th July, 1868, an agreement was entered into between the plaintiff and J. D., who was then sole owner of the above-named barque "Lady of the Lake," whereby J. D. agreed to sell, and the plaintiff agreed to purchase, 32-64th parts or shares of the vessel for the sum of 500*l.*; payment 300*l.* in cash, and the remainder by purchaser's acceptances at three and six months date, and it was thereby agreed that the plaintiff was to be commander of the vessel.

2. The plaintiff accordingly paid to J. D. the sum of 300*l.*, and gave him his (the plaintiff's) acceptances at three and six months date for the residue of the said purchase money, and J. D. by bill of sale transferred 32-64th parts or shares in the vessel to the plaintiff, which bill of sale was duly registered on the 18th of July, 1868; the plaintiff has since been and still is the registered owner of such 32-64th shares.

3. The vessel then sailed under the plaintiff's command on a voyage from Sunderland to the Brazils and other ports, and then on a homeward voyage to Liverpool, where she arrived on the 18th of June, 1869, and having there discharged her homeward cargo she sailed thence under the plaintiff's command with a cargo to

the Tyne, and thence to Sunderland, at which port she arrived on the 9th of August, 1869.

4. The plaintiff then made several ineffectual applications to J. D., with a view to obtaining another charter for the said vessel, and after she had been lying idle for a considerable time, the plaintiff on or about the 16th of September, 1869, obtained an advantageous charter for her to proceed to Barcelona with a cargo of coals, and with a view to enabling her to execute such charter the plaintiff paid the dock dues, and moved the vessel into a slipway in order that her bottom might be cleaned, but on or about the 17th of September, whilst the vessel was on the shore adjoining the slipway, the defendant, to whom the said J. D. had in the meantime transferred his 32-64th parts, forcibly took the vessel out of the possession of the plaintiff, and refused, and still refuses, to allow the plaintiff to take the vessel on her said voyage to Barcelona, and by reason thereof heavy loss is being occasioned to the plaintiff.

The plaintiff claims:—

1. Judgment giving possession of the vessel "Lady of the Lake" to the plaintiff:
2. The condemnation of the defendant in costs of suit, and in all losses and damages occasioned by the defendant to the plaintiff:
3. Such further relief as the nature of the case requires.

[Title.]

Defence.

Defence.

1. The defendant says that the acceptances in the second paragraph of the claim mentioned were respectively dishonoured by the plaintiff, and have never yet been paid by him.

2. It was agreed between the plaintiff and J. D., that J. D. should act, and he has since always acted, as ship's husband of the "Lady of the Lake."

3. On the 31st August, 1869, J. D. sold to the defendant, for the sum of 400*l*., and by bill of sale duly executed, transferred to him his 32-64th shares, and the bill of sale was duly registered on the 14th of September following.

4. After the "Lady of the Lake" had arrived at Sunderland, and after the defendant had purchased from J. D. his 32-64th shares of the "Lady of the Lake," the defendant placed the vessel in the custody and possession of a shipkeeper. The plaintiff, however, unlawfully removed her from such possession, and thereupon the defendant had the vessel taken into the South Dock of the harbour at Sunderland, with orders that she should be kept there. What the defendant did, as in this article mentioned, he did with the consent and full approval of J. D.

5. At the time of the sale of the "Lady of the Lake" by J. D. to the defendant as afore-mentioned, there was and there still is due from the plaintiff, as part owner of the "Lady of the Lake," to J. D., as part owner and ship's husband, a sum of money exceeding 300*l.* in respect of the vessel and her voyages over and above the amount of the unpaid acceptances.

6. Save as herein appears, the averments in the fourth paragraph of the claim contained are untrue, and if the charter-party mentioned in that paragraph was obtained by the plaintiff as alleged, which the defendant does not admit, it was obtained by him without the authority, consent, or knowledge of J. D. or the defendant.

7. Before the defendant took possession of the vessel as aforementioned, the plaintiff ceased to be master of her, with the consent of J. D. or the defendant.

8. J. D. has instituted an action against the said vessel in in order to have the accounts taken between him and the plaintiff, and to enforce payment of the money due from the plaintiff to him.

[Title.]

Reply.

Reply. 1. The plaintiff says in reply to the first paragraph of the defence that the bills therein mentioned were dishonoured by the plaintiff because J. D. was indebted to the plaintiff in a large amount for his wages as master, and for his share of the earnings of the "Lady of the Lake," and refused payment thereof.

2. J. D. did not place the vessel in the exclusive custody or possession of a shipkeeper as in the fifth paragraph of the defence stated or implied. On the contrary, the vessel continued in the custody and possession of the plaintiff, who still holds her register. A man was sent on board the vessel by J. D. to look after J. D.'s share in the said vessel while she was in dock, but he did not dispossess the said plaintiff or take exclusive possession of the vessel, and the plaintiff was not dispossessed of the vessel until on or about the 17th of September last.

3. Except as hereinbefore appears the plaintiff joins issue upon the defendant's statement of defence.

[Title.]

Rejoinder.

Rejoinder. The defendant joins issue upon the first and second paragraphs of the Reply.

No. 22.

Promissory Note.

187 . B. No.

In the High Court of Justice,
Division.
Writ issued 3rd August, 1876.
Between A. B., Plaintiff,
and
E. F., Defendant.

Statement of Claim.

1. The defendant on the day of made his promissory note, whereby he promised to pay to the plaintiff or his order *l.* three months after date. Claim.

2. The note became due on the day of , 1874, and the defendant has not paid it.

The plaintiff claims:—

The amount of the note and interest thereon to judgment.

The plaintiff proposes that this action should be tried in the county of

[Title.]

Statement of Defence.

1. The defendant made the note sued upon under the following circumstances:—The plaintiff and defendant had for some years been in partnership as coal merchants, and it had been agreed between them that they should dissolve partnership, that the plaintiff should retire from the business, that the defendant should take over the whole of the partnership assets and liabilities, and should pay the plaintiff the value of his share in the assets after deducting the liabilities. Defence.

2. The plaintiff thereupon undertook to examine the partnership books, and inquire into the state of the partnership assets and liabilities; and he did accordingly examine the books, and make the said inquiries, and he thereupon represented to the defendant that the assets of the firm exceeded 10,000*l.*, and that the liabilities of the firm were under 3,000*l.*, whereas the fact was that the assets of the firm were less than 5,000*l.*, and the liabilities of the firm largely exceeded the assets.

3. The misrepresentations mentioned in the last paragraph induced the defendant to make the note now sued on, and there never was any other consideration for the making of the note.

[Title.]

Reply.

The plaintiff joins issue on the defence. Reply.

No. 23.

Probate of Will in Solemn Form.

187 . B. No.

In the High Court of Justice.
Probate Division.
Writ issued [ ].
Between A. B., Plaintiff,
and
E. F., Defendant.

Statement of Claim.

Claim.

1. C. T., late of Bicester, in the county of Oxford, gentleman, deceased, who died on the 20th of January, 1875, at Bicester, being of the age of 21 years, made his last will, with one codicil thereto, the said will bearing date the 1st day of October, 1874, and the said codicil the 1st of January, 1875, and in the said will appointed the plaintiff sole executor thereof.

2. The said will and codicil were signed by the deceased [*or*, by X. Y., in the presence and by the directions of the deceased, *or* signed by the deceased, who acknowledged his signature, *or as the case may be*] in the presence of two witnesses present at the same time, the said will in the presence of H. P. and J. R., and the said codicil in the presence of J. D. and G. E., and who subscribed the same in the presence of the said deceased.

3. The deceased was at the time of the execution of the said will and codicil respectively of sound mind, memory, and understanding.

The plaintiff claims :—

That the Court shall decree probate of the said will and codicil in solemn form of law.

[Title.]

Statement of Defence.

The defendant says as follows :—

Defence.

1. The said will and codicil of the said deceased were not duly executed according to the provisions of the Statute 1 Vict. c. 26.

2. The deceased at the time the said will and codicil respectively purport to have been executed was not of sound mind, memory, and understanding.

3. The execution of the said will and codicil was obtained by the undue influence of the plaintiff [and others acting with him, whose names are at present unknown to the defendant].

4. The execution of the said will and codicil was obtained by the fraud of the plaintiff, such fraud, so far as is within the defendant's present knowledge, being [*state the nature of the fraud*].

5. The said deceased at the time of the execution of the said will and codicil did not know and approve of the contents thereof, or of the contents of the residuary clause in the said will [*as the case may be*].

6. The deceased made his true last will, dated the 1st day of January, 1873, and in the said will appointed the defendant sole executor thereof. [*Propound this will as in paragraphs* 2 *and* 3 *of claim.*]

The defendant claims:—

1. That the Court will pronounce against the said will and codicil propounded by the plaintiff:
2. That the Court will decree probate of the said will of the said deceased, dated the 1st of January, 1873, in solemn form of law.

[Title.]

Reply.

Reply. 1. The plaintiff joins issue upon the statement of defence of the defendant, as contained in the first, second, third, fourth, and fifth paragraphs thereof.

2. The plaintiff says that the said will of the said deceased, dated the 1st of January, 1873, was duly revoked by the will of the said 1st of October, 1873, propounded by the plaintiff in his statement of claim.

No 24.

Recovery of Land.—Landlord and Tenant.

187 . B. No.

In the High Court of Justice,
Common Pleas Division.

Writ issued 3rd August, 1876.

Between A. B., Plaintiff,
and
C. D., Defendant.

Statement of Claim.

Claim. 1. On the day of the plaintiff let to the defendant a house, No. 52, Street, in the City of London, as tenant from year to year, at the yearly rent of 120*l.*, payable quarterly, the tenancy to commence on the day of .

2. The defendant took possession of the house and continued tenant thereof until the day of last, when the tenancy determined by a notice duly given.

3. The defendant has disregarded the notice and still retains possession of the house.

The plaintiff claims:—

1. Possession of the house.

2. *l.* for mesne profits from the day of

The plaintiff proposes that this action should be tried in London.

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187 . No.

In the High Court of Justice,
Common Pleas Division.

Between A. B., Plaintiff,
and
C. D., Defendant
(by original action,)
And between C. D., Plaintiff,
and
A. B., Defendant
(by counter-claim).

The defence and counter-claim of the above-named C. D.

Defence. 1. Before the determination of the tenancy mentioned in the statement of claim, the plaintiff A. B., by writing dated the day of , and signed by him, agreed to grant to the defendant C. D. a lease of the house mentioned in the statement of claim, at the yearly rent of 150*l.*, for the term of twenty-one years, commencing from the day of , when the defendant C. D.'s tenancy from year to year determined, and the defendant has since that date been and still is in possession of the house under the said agreement.

Counter-claim. 2. By way of counter-claim the defendant claims to have the agreement specifically performed and to have a lease granted to him accordingly, and for the purpose aforesaid, to have this action transferred to the Chancery Division.

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187 . No.

In the High Court of Justice,
Chancery Division.
(Transferred by order dated day of .)

Between A. B., Plaintiff,
and
C. D., Defendant
(by original action),
And between C. D., Plaintiff,
and
A. B., Defendant
(by counter-claim).

The reply of the plaintiff A. B.

The plaintiff A. B. admits the agreement stated in the defendant C. D.'s statement of defence, but he refuses to grant to the defendant a lease, saying that such agreement provided that the lease should contain a covenant by the defendant to keep the house in good repair and a power of re-entry by the plaintiff upon breach of such covenant, and the plaintiff says that the defendant has not kept the house in good repair, and the same is now in a dilapidated condition. Reply.

[Title.]

Joinder of Issue.

The defendant C. D. joins issue upon the plaintiff A. B.'s statement in reply.

No. 25.

Recovery of Land.

187 . B. No.

In the High Court of Justice,
Common Pleas Division.
Writ issued 3rd August, 1876.

Between A. B. and C. D., Plaintiffs,
and
E. F., Defendant.

Statement of Claim.

1. K. L., late of Sevenoaks in the county of Kent, duly executed his last will, dated the 4th day of April, 1870, and thereby devised his lands at or near Sevenoaks, and all other his lands in the county of Kent, unto and to the use of the plaintiffs and their heirs, upon the trusts therein mentioned for the benefit of his daughters Margaret and Martha, and appointed the plaintiffs executors thereof. Claim.

2. K. L. died on the 3rd day of January, 1875, and his said will was proved by the plaintiffs in the Court of Probate on or about the 4th day of February, 1875.

3. K. L. was at the time of his death seised in fee of a house at Sevenoaks, and two farms near there called respectively , the Home farm containing 276 acres, and the Longton farm containing 700 acres, both in the county of Kent.

4. The defendant, soon after the death of K. L., entered into possession of the house and two farms, and has refused to give them up to the plaintiffs.

The plaintiffs claim :—

1. Possession of the house and two farms;
2. *l.* for mesne profits of the premises from the death of K. L. till such possession shall be given.

The plaintiff proposes that this action should be tried in the county of Kent.

[Title.]

Statement of Defence.

Defence.

1. The defendant is the eldest son of I. L. deceased, who was the eldest son of K. L., in the statement of claim named.

2. By articles bearing date the 31st of May, 1827, and made previous to the marriage of K. L. with Martha his intended wife, K. L., in consideration of such intended marriage, agreed to settle the house and two farms in the statement of claim mentioned (and of which he was then seised in fee) to the use of himself for his life, with remainder to the use of his intended wife for her life, and after the survivor's decease, to the use of the heirs of the body of the said K. L. on his wife begotten, with other remainders over.

3. The marriage soon after took effect, K. L., by deeds of lease and release, bearing date respectively the 4th and 5th of April, 1828, after reciting the articles in alleged performance of them, conveyed the house and two farms to the use of himself for his life, with remainder to the use of his wife for her life, and after the decease of the survivor of them, to the use of the heirs body of K. L. on the said Martha to be begotten, with other remainders over.

4. There was issue of the marriage an only son, Thomas L , and two daughters. After the death of Thomas L , which took place in February, 1864, K. L., on the 3rd May, 1864, executed a disentailing assurance, which was duly enrolled and thereby conveyed the house and two farms to the use of himself in fee.

[Title.]

Reply.

Reply.

The plaintiffs join issue upon the defendant's statement of defence.

No. 26.

Salvage.

In the High Court of Justice,
Admiralty Division.
Writ issued [ ].

THE "CAMPANIL."

Between A. B. and C. D., Plaintiffs,
and
E. F. and G. H., Defendants.

Statement of Claim.

1. The "Brazilian" is a screw-steamer belonging to the port of Newcastle, of the burthen of 1,359 tons gross registered tonnage, and propelled by engines of 130-horse power, and at the time of the rendering of the salvage services hereinafter mentioned she was navigated by her master and a crew of twenty-four hands. She left the port of Newcastle on the 27th of November, 1873, on a voyage to Genoa, and thence by way of Palmaras and Aguilas to the Tyne, and about 10 a.m. on the 26th of December, 1873, in the course of her homeward voyage, with a cargo of merchandise, she was off the coast of Portugal, the Island of Ons bearing about S.E. by E., when those on board her sighted a disabled steamer about four points on their starboard bow, in-shore, flying signals of distress. A strong gale was blowing at the time, and there was a very heavy sea running. Claim.

2. The "Brazilian" at once made towards the disabled steamer, which proved to be the "Campanil," the vessel proceeded against in this action. She was heavily laden with a cargo of iron ore. The "Brazilian," as she approached the "Campanil," signalled to her, and the "Campanil" answered by signal that her engines had broken down. By this time the "Campanil" was heading in-shore, rolling heavily, and shipping a large quantity of water. The "Brazilian" came under the lee of the "Campanil" and asked if she wanted assistance. Her master replied that he wanted to be towed to Vigo, as his vessel had lost her screw. The master of the "Brazilian" then asked those on board the "Campanil" to send him a hawser, and for a long time those on board the "Brazilian" made attempts to get a hawser from the "Campanil," and exposed themselves and their vessel to great danger in doing so. The wind and sea rendering it impossible to get the hawser whilst the "Brazilian" was to leeward of the "Campanil," the "Brazilian" went to windward and attempted to float lines by means of life-buoys to the "Campanil." During all this time the "Campanil" was quite unmanageable, and yawed about, and there was very great difficulty in manœuvring the "Brazilian" so as to retain command over her and keep her near the "Campanil." It was necessary to keep constantly altering the engines of the "Brazilian," setting them on ahead and reversing them quickly, and in consequence the engines laboured heavily and were exposed to great danger of being strained.

3. Whilst the "Brazilian" was endeavouring to float lines to the "Campanil," the "Campanil" made a sudden lurch and struck the "Brazilian" on her port quarter, knocking in her port bulwark and rail, and causing other damage to the vessel. After many unsuccessful efforts by those on board the "Brazilian," and after they had lost two life buoys and a quantity of rope, a

hawser from the "Campanil" was at length made fast on board the "Brazilian," and the "Brazilian," with the "Campanil" in tow, steamed easy ahead. A second hawser was then got out and made fast with coir springs, and the "Brazilian" then commenced to tow full speed ahead, each hawser having a full scope of 90 fathoms.

4. The "Brazilian" made towards Vigo, which was about thirty-five miles distant; the vessels made about two knots an hour, the "Brazilian" keeping her engines going at full speed. The "Brazilian" laboured very heavily, and both vessels shipped large quantities of water.

5. About noon one of the tow ropes broke, and both vessels were in danger of being driven ashore, broken water and rocks appearing to leeward, distant about two miles. After great difficulty the broken hawser was made fast again with a heavy spring of a number of parts of rope, and the "Brazilian" towed ahead under the lee of Ons Island.

6. Shortly afterwards the weather moderated and the sea went down a little, and the "Brazilian" was able to make more way, and about 7 p.m. the same day she towed the "Campanil" into Vigo harbour in safety.

7. The "Brazilian" was compelled to remain in harbour the next day to pay port charges and clear at the Custom House.

8. The coast off which the aforesaid services were rendered is rocky and exceedingly dangerous, and strong currents set along it, and but for the services rendered by the "Brazilian" the "Campanil" must have gone ashore and been wholly lost, together with her cargo, and in all probability her master and crew would have been drowned. No other steamer was in sight, and there was not any prospect of any other efficient assistance.

9. In rendering the said services the "Brazilian" and those on board her were exposed to great danger. Owing to the heavy sea, and the necessity of towing with a long scope of hawser, there was great danger of fouling the screw of the "Brazilian," and it required constant vigilance on the part of the master and crew to prevent serious accident. The master and crew of the "Brazilian" underwent much extra fatigue and exertion.

10. The damage sustained by the "Brazilian" in rendering the said services amounts to the sum of 150*l.*, and the value of the extra quantity of coal consumed in consequence of the said services is estimated at 16*l.*, and 4*l.* 1*s.* 5*d.* was paid by the owners of the "Brazilian" for harbour dues and other charges at Vigo.

11. The value of the "Campanil," her cargo and freight, at the time of the salvage services, were as follows, that is to say: The "Campanil" was of the value of 13,000*l.*, her cargo was of the value of 300*l.*, and the gross amount of freight payable upon delivery of the cargo laden on board her at Barrow-in-Furness was 675*l.*

12. The value of the "Brazilian," her freight and cargo was about 25,050*l*.

The plaintiffs claim :—

1. Such an amount of salvage as to the Court may seem just :
2. That the defendants and their bail be condemned in costs :
3. Such further or other relief as the nature of the case may require.

[Title.]

Statement of Defence.

1. The defendants say that upon the 22nd of December, 1873, the iron screw steamship "Campanil," of the burden of 660 tons register gross, propelled by engines of 70-horse power, navigated by David Boughton, her master, and a crew of 16 hands, left Porman, bound to Barrow-in Furness, laden with a cargo of iron ore. Defence.

2. At about 8 a.m. of the 26th of December, while the "Campanil" was prosecuting her voyage, the shaft of her propeller broke outside the stern tube, and she lost her propeller. The "Campanil" was then brought to the wind, which was south by east, blowing fresh, and she proceeded under sail for Vigo, and continued to do so till about 9.30 a.m., when two steamships which had been for some time in sight, and coming to the northward, approached the "Campanil." The ensign of the "Campanil" was hoisted, union up as a signal to one of such steamships, which afterwards came to the "Campanil," and proved to be the "Brazilian," whose owners, master, and crew are the plaintiffs.

3. The "Brazilian" then signalled the "Campanil," and inquired what was the matter, and was signalled in reply that the "Campanil" had lost her propeller, and required to be towed to Vigo, upon which the "Brazillian" signalled for the rope of the "Campanil," in order to take her in tow. After this the "Brazilian" steamed round the "Campanil" and up on to her starboard bow, and in so doing the "Brazilian" came with her port quarter into the starboard bow of the "Campanil" and did her considerable damage.

4. The "Brazilian" then threw a heaving line on board the "Campanil," and one of the "Campanil's" hawsers was attached to the line and hauled on board the "Brazilian," which passed one of her hawsers to the "Campanil" by means of life buoys, and when such hawsers had been secured between the two vessels the "Brazilian" commenced to tow the "Campanil" for Vigo, it being at this time about 10.30 a.m. and Ons Island then bearing about south-east by south, and distant about 15 miles.

5. The "Brazilian" proceeded with the "Campanil" in tow, but owing to the two vessels being laden, and to the small power

of the "Brazilian," she was only able to make very slow progress with the "Campanil," and it was not until 6.30 p.m. of the said day that the "Brazilian" arrived at Vigo with the "Campanil," which then came to anchor off the town there.

6. The defendants on the . day of tendered to the plaintiffs and have paid into Court the sum of 350*l.* for the services so as aforesaid rendered to the "Campanil" and her said cargo and freight, and offered to pay the costs, and submit that the same is ample and sufficient.

[Title.]

Reply.

Reply. 1. The plaintiffs admit the first and second articles of the Answer, and they admit that the "Brazilian" came into collision with the "Campanil," and caused slight damage to the "Campanil," but save as aforesaid they join issue upon the statement of defence.

No. 27.

TRESPASS TO LAND.

187 . No.

In the High Court of Justice,
Division.

Writ issued 3rd August, 1876.

Between A. B., Plaintiff,
and
E. F., Defendant.

Statement of Claim.

Claim. 1. The plaintiff was on the 5th March, 1876, and still is, the owner and occupier of a farm called Highfield Farm, in the parish of and county of

2. A private road, known as Highfield Lane runs through a portion of the plaintiff's farm. It is bounded upon both sides by fields of the plaintiff's, and is separated therefrom by a hedge and ditch.

3. For a long time prior to the 5th March, 1876, the defendant had wrongfully claimed to use the said road for his horses and carriages on the alleged ground that the same was a public highway, and the plaintiff had frequently warned him that the same was not a public highway, but the plaintiff's private road, and that the defendant must not so use it.

4. On the 5th of March, 1876, the defendant came with a cart and horse, and a large number of servants and workmen, and forcibly used the road, and broke down and removed a gate which the plaintiff had caused to be placed across the same.

5. The defendant and his servants and workmen on the same occasion pulled down and damaged the plaintiff's hedge and ditch upon each side of the road, and went upon the plaintiff's field beyond the hedge and ditch, and injured the crops there growing, and dug up and injured the soil of the road; and in any case the acts mentioned in this paragraph were wholly unnecessary for the assertion of the defendant's alleged right to use or the user of the said road as a highway.

The plaintiff claims:

1. Damages for the wrongs complained of.
2. An injunction restraining the defendant from any repetition of any of the acts complained of.
3. Such further relief as the nature of the case may require.

[Title.]

Statement of Defence.

1. The defendant says that the road was and is a public high- Defence.
way for horses and carriages; and a few days before the 5th of March, 1876, the plaintiff wrongfully erected the gate across the road for the purpose of obstructing and preventing, and did obstruct and prevent the use of the road as a highway. And the defendant on the said 5th March, 1876, caused the said gate to be removed, in order to enable him lawfully to use the road by his horses and carriages as a highway.

2. The defendant denies the allegations of the fifth paragraph of the statement of claim, and says that neither he nor any of his workmen or servants did any act, or used any violence other than was necessary to enable the plaintiff lawfully to use the highway.

[Title.]

Reply.

The plaintiff joins issue upon the defendant's statement of Reply.
defence.

No. 28.

Form of Demurrer.

In the High Court of Justice.

Division.

A. B. *v.* C.D.

The defendant [plaintiff] demurs to the [plaintiff's statement of complaint, *or* defendant's statement of defence, *or* set-off, *or* of counter-claim], [*or* to so much of the plaintiff's statement of complaint as claims . . . . . *or* as alleges as a breach of contract the matters mentioned in paragraph 17, *or as the case may be*], and

says that the same is bad in law on the ground that [*here state a ground of demurrer*] and on other grounds, sufficient in law to sustain his demurrer.

No. 29.

Memorandum of Entry of Demurrer for Argument.

1874. B. No.

In the High Court of Justice.

Division.

A. B. *v.* C. D.

Enter for the argument the demurrer of to

X Y.,

Solicitor for the plaintiff [*or &c.*]

APPENDIX (D).

Forms of Judgment.

1. *Default of Appearance and Defence in Case of Liquidated Demand.*

1876. B. No.

In the High Court of Justice,
Division.
Between A. B., Plaintiff,
and
C. D. and E. F., Defendants.

30th November, 1876

The defendants [*or* the defendant C. D.] not having appeared to the writ of summons herein [*or not having delivered any statement of defence*], it is this day adjudged that the plaintiff recover against the said defendant *l.*, and costs, to be taxed.

---

2. *Judgment in default of Appearance in Action for Recovery of Land.*

[Title, &c.]

30th November, 1876.

No appearance having been entered to the writ of summons herein, it is this day adjudged that the plaintiff recover possession of the land in the said writ mentioned.

---

3. *Judgment in default of Appearance and Defence after Assessment of Damages.*

1876. B. No.

In the High Court of Justice.
Division.
Between A. B. and C. D., Plaintiffs,
and
E. F. and G. H., Defendants.

30th November, 1876.

The defendants not having appeared to the writ of summons herein [*or not having delivered a statement of defence*], and a

writ of inquiry, dated 1876, having been issued directed to the sheriff of to assess the damages which the plaintiff was entitled to recover, and the said sheriff having by his return dated the 1876, returned that the said damages have been assessed at *l.*, it is adjudged that the plaintiff recover *l.*, and costs to be taxed.

---

4. *Judgment at Trial by Judge without a Jury.*

[*Year, letter, and number.*]

Division.

day of 18 .

[*If in Chancery Division, name of Judge.*]

Between A. B., Plaintiff,

and

C. D., E. F., and G. H., Defendants.

This action coming on for trial [the day of and] this day, before in the presence of counsel for the plaintiff and the defendants [*or, if some of the defendants do not appear*, for the plaintiff and the defendant C. D., no one appearing for the defendants E. F. and G. H., although they were duly served with notice of trial as by the affidavit of filed the day of appears,] upon hearing the probate of the will of , the answers of the defendants C. D., E. F., and G. H., to interrogatories, the admission in writing, dated , and signed by [Mr. the solicitor for] the plaintiff A. B. and by [Mr. the solicitor for] the defendant C. D., the affidavit of filed the day of , the affidavit of filed the day of , the evidence of taken on their oral examination at the trial, and an exhibit marked X., being an indenture dated, &c. and made between [parties], and what was alleged by counsel on both sides: This Court doth declare, &c.

And this Court doth order and adjudge, &c.

---

5. *Judgment after Trial by a Jury.*

[Title, &c.]

15th November 1876.

The action having on the 12th and 13th November, 1876, been tried before the Honourable Mr. Justice and a special jury of the county of , and the jury having found [*state findings as in officer's certificate*], and the said Mr. Justice

having ordered that judgment be entered for the plaintiff for *l.* and costs of suit [*or as the case may be*]: Therefore it is adjudged that the plaintiff recover against the defendant *l.* and *l.* for his costs of suit [*or* that the plaintiff recover nothing against the defendant, and that the defendant recover against the plaintiff *l.* for his costs of defence, *or as the case may be.*].

---

6. *Judgment after Trial before Referee.*

[Title, &c.]

30th November, 1876.

The action having on the 27th November, 1876, been tried before X. Y., Esq., an official [*or* special] referee; and the said X. Y. having found [*state substance of referee's certificate*], it is this day adjudged that

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6*a*. *Judgment after Trial of Questions of Account by Referee.*

In the High Court of Justice. R.S.C., April 1880.

Division. 18 No.

Between Plaintiff,

and

Defendant.

The day of 18 .

The questions of account in this action having been referred to and he having found that there is due from the to the the sum of *l.* and directed that the do pay the costs of the reference

It is this day adjudged that the recover against the said *l.*, and costs to be taxed.

The above costs have been taxed and allowed at *l.*, as appears by a Master's certificate dated the day of 18 .

---

7. *Judgment upon Motion for Judgment.*

[Title, &c.]

30th November, 1876.

This day before Mr. X. of counsel for the plaintiff [*or as the case may be*] moved on behalf of the said

[*state judgment moved for*], and the said Mr. X. having been heard of counsel for , and Mr. Y. of counsel for , the Court adjudged.

---

8. *Interlocutory Judgment in default of Appearance or Defence where Demand Unliquidated.*

R. S. C. April, 1880.

In the High Court of Justice.

Division. 18 . No.

Between

Plaintiff,

and

Defendant.

The day of , 18 .

No*

herein.

* "appearance having been entered to the writ of summons" or "statement of defence or demurrer having been delivered by the defendant."

It is this day adjudged that the plaintiff recover against the defendant†

† "The value of the goods," or "damages," or both, as the case may be.

to be assessed.

---

9. *Judgment after Appearance and Order under Order XIV., Rule 1a.*

R.S.C., April, 1880.

In the High Court of Justice.

Division. 18 . No.

Between

Plaintiff,

and

Defendant.

The day of , 18 .

The defendant having appeared to the writ of summons herein, and the plaintiff having by the order of dated the day of 18 , obtained leave to sign judgment under the Rules of the Supreme Court, Order XIV., Rule 1*a*, for*

* Recite order.

It is this day adjudged that the plaintiff recover against the defendant *l.* and costs to be taxed.

The above costs have been taxed and allowed at *l.*, as appears by a Master's certificate, dated the day of , 18 .

10. *Judgment after Trial by Court without Jury.*

In the High Court of Justice. R.S.C. April, 1890.

Division. 18 . No.

Between

Plaintiff,

and

Defendant.

This action having on the day of 18 , been tried before and the said on the day of 18 , having ordered that judgment be entered for the for *l.*

It is this day adjudged that the recover from the *l.* and costs to be taxed.

The above costs have been taxed and allowed at *l.*, as appears by a Master's certificate dated the day of , 18 .

Judgment entered the day of 18 .

---

11. *Judgment in Pursuance of Order.*

In the High Court of Justice. R.S.C. April, 1890.

Division. 18 . No.

Between

Plaintiff,

and

Defendant.

Pursuant to the Order of dated 18 . whereby it was ordered

and default having been made

It is this day adjudged that the plaintiff recover against the said defendant *l.* and costs to be taxed.

The above costs have been taxed and allowed at *l.*, as appears by a Master's certificate dated the day of , 18 .

---

12. *Judgment on Certificate of Registrar of County Court.*

R.S.C. April, 1880.

In the High Court of Justice.

Division. 18 . No.

Between

Plaintiff,

and

Defendant.

The day of , 18

This action having been ordered under Section 26 of the County Court Act, 1856 (19 & 20 Vict. c. 108), to be tried in the County Court of , and the registrar of that Court having certified that the result was

It is this day adjudged that recover against *l.* and costs to be taxed.

The above costs have been taxed and allowed at *l.*, as appears by a Master's certificate dated the day of , 18 .

---

13. *Judgment for Defendant's Costs on Discontinuance.*

R.S.C. April, 1880.

In the High Court of Justice.

Division. 18 . No.

Between

Plaintiff,

and

Defendant.

The day of , 18 .

The plaintiff having by a notice in writing dated the day of 18 ,*

* "wholly discontinued this action" or "withdrawn his claim in this action for" or "withdrawn so much of his claim in this action as relates to" —— or as the case may be.

It is this day adjudged that the defendant recover against the plaintiff costs to be taxed.

The above costs have been taxed and allowed at *l.*, as appears by a Master's certificate dated the day of , 18 .

---

14. *Judgment for Plaintiff's Costs after Confession of Defence.*

R.S.C. April, 1880.

In the High Court of Justice.

Division. 18 . No.

Between

Plaintiff,

and

Defendant.

The day of , 18 .

The defendant in his statement of defence herein having alleged a ground of defence which arose after the commencement of this action, and the plaintiff having on the day of , 18 , delivered a confession of that defence,

It is this day adjudged that the plaintiff recover against the defendant costs to be taxed.

The above costs have been taxed and allowed at *l.*, as appears by a Master's certificate dated the day of , 18 .

---

15. *Judgment for Costs after Acceptance of Money paid into Court.*

In the High Court of Justice. R.S.C. April, 1880.

Division. 18 . No.

Between

Plaintiff,

and

Defendant.

The day of , 18 .

The defendant having paid into Court in this action the sum of *l.* in satisfaction of the plaintiff's claim, and the plaintiff having by his notice dated the day of 18 , accepted that sum in satisfaction of his entire cause of action, and the plaintiff's costs herein having been taxed, and the defendant not having paid the same within forty-eight hours after the said taxation;

It is this day adjudged that the plaintiff recover against the defendant costs to be taxed.

The above costs have been taxed and allowed at *l.*, as appears by a Master's certificate dated the day of , 18 .

---

16. *Judgment where no Judgment entered at Trial by Jury.*

In the High Court of Justice. R.S.C. April, 1880.

Division. 18 . No.

Between

Plaintiff,

and

Defendant.

* Date of Order of Court.

* The day of , 18 .

This action having on the 18 , been tried before
and a jury of the of and the jury having found
and the not having thought fit to order any judgment to be entered,
Now on motion before the Court for judgment on behalf of the , the Court having

It is this day adjudged that the recover against the the sum of *l.* and costs to be taxed.

The above costs have been taxed and allowed at *l.*, as appears by a Master's certificate dated the day of 18 .

Judgment entered the day of 18 .

---

17. *Judgment after Motion on leave reserved.*

R.S.C. April, 1880.

In the High Court of Justice.
Division. 18 . No.

Between

Plaintiff,

and

Defendant.

*The day of 18 .

This action having on the 18 , been tried before
and a jury of the of ,
and the jury having found ,
and having ordered that judgment be entered for ,
subject to leave to the to move to set aside the judgment
Now on motion before the Court for judgment on behalf of the , the Court having

† "do stand" or "be set aside and that the recover against the the sum of £ and costs to be taxed."

It is this day adjudged that the said judgment†

The above costs have been taxed and allowed at *l.*, as appears by a Master's certificate dated the day of 18 .

Judgment entered the day of 18 .

18. *Judgment on Motion after Trial of Issue.*

R.S.C. April, 1880.

In the High Court of Justice.

Division. 18 . No.

Between

Plaintiff,

and

Defendant.

*The day of 18

†The of fact arising in this action by the order dated the day of ordered to be tried before having on the day of been tried before , and the having found , Now on motion before the Court for judgment on behalf of the , the Court having

* Date of Order of Court.

† "issues" or "questions."

It is this day adjudged that the recover against the the sum of *l.*, and costs to be taxed.

The above costs have been taxed and allowed at *l.*, as appears by a Master's certificate dated the day of , 18 .

Judgment entered the day of 18 .

---

19. *Judgment on Motion generally.*

R.S.C. April, 1880.

In the High Court of Justice.

Division. 18 . No. .

Between

Plaintiff,

and

Defendant.

‡The day of 18 .

This action having on the day of 18 come on before the Court on motion for judgment on behalf of the , and the Court after hearing counsel for the

having ordered that§

‡ Date of Order of Court.

§ As in Order of Court.

It is this day adjudged that the recover against the the sum of *l.* and costs to be taxed.

The above costs have been taxed and allowed at *l.*, as appears by a Master's certificate dated the day of , 18 .

Judgment entered the day of , 18 .

APPENDIX (E).

Forms of Præcipe.

1. *Fieri facias.*

1875. B. No.

In the High Court of Justice,
Division.
Between A. B., Plaintiff,
and
C. D. and others, Defendants.

Seal a writ of fieri facias directed to the sheriff of to levy against C. D. the sum of *l.* and interest thereon at the rate of *l.* per centum per annum from the day of [and *l.* costs] to Judgment [*or* order] dated day of .
[Taxing master's certificate, dated day of .]

X. Y., Solicitor for [*party on whose behalf writ is to issue*].

---

2. *Elegit.*

187 . B. No.

In the High Court of Justice,
Division.
Between A. B., Plaintiff,
and
C. D. and others, Defendants.

Seal a writ of elegit directed to the sheriff of against of in the county of for not paying to A. B. the sum of *l.*, together with interest thereon, from the day of [and the sum of *l.* for costs,] with interest thereon at the rate of 4*l.* per centum per annum.
Judgment [*or* order] dated day of 18 .
[Taxing master's certificate, dated day of 18 .]

X. Y.
Solicitor for

3. *Venditioni Exponas.*

187 . B. No.

In the High Court of Justice,
Division.
Between A. B., Plaintiff,
and
C. D. and others, Defendants.

Seal a writ of venditioni exponas directed to the sheriff of to sell the goods and of C. D. taken under a writ of fieri facias in this action tested day of

X. Y.,
Solicitor for

---

4. *Fieri Facias de Bonis Ecclesiasticis.*

187 . B. No.

In the High Court of Justice,
Division.
Between A. B., Plaintiff,
and
C. D. Defendants.

Seal a writ of fieri facias de bonis ecclesiasticis directed to the bishop [*or* archbishop, *as the case may be*] of to levy against C. D. the sum of *l.*
Judgment [*or* order] dated day of .
[Taxing Master's certificate, dated day of .]

X. Y.,
Solicitor for

---

5. *Sequestrari Facias de Bonis Ecclesiasticis.*

187 . B. No.

In the High Court of Justice,
Division.
Between A. B., Plaintiff,
and
C. D. and others, Defendants.

Seal a writ of sequestrari facias directed to the Lord Bishop of against C. D. for not paying to A. B. the sum of *l.*

---

6. *Writ of Sequestration.*

In the High Court of Justice, 187 . B. No.
Division.
Between A. B., Plaintiff,
and
C. D. and others, Defendants.

Seal a writ of sequestration against C. D. for not at the suit of A. B. directed to *names of Commissioners.*]
Order dated day of

---

7. *Writ of Possession.*

In the High Court of Justice, 187 . B. No.
Division.
Between A. B., Plaintiff,
and
C. D. and others, Defendants.

Seal a writ of possession directed to the sheriff of to deliver possession to A. B. of
Judgment dated day of

---

8. *Writ of Delivery.*

In the High Court of Justice, 187 . B. No.
Division.
Between A. B. Plaintiff,
and
C. D. and others, Defendants.

Seal a writ of delivery directed to the sheriff of to make delivery to A. B. of

---

9. *Writ of Attachment.*

In the High Court of Justice. 187 . B. No.
Division
Between A. B. Plaintiff,
and
C. D. and others, Defendants.

Seal in pursuance of order dated day of an attachment directed to the sheriff of against C. D. for not delivering to A. B.

---

10. *Distringas against Ex-Sheriff.*

In the High Court of Justice. 18 . No. R.S.C. April, 1880.
Division.

Between Plaintiff,

and

Defendant.

Seal a writ of distringas nuper vicecomitem quod venditioni exponat, directed to the sheriff of , to sell the goods and of , taken under a writ of fieri facias in this action tested the day of 18 .

Dated the day of 18 .

(Signed)
(Address)
Solicitor for the

---

11. *Inquiry.*

In the High Court of Justice. 18 . No. R.S.C. April, 1880.
Division.

Between Plaintiff,

and

Defendant.

Seal a writ of inquiry directed to the sheriff of to assess the damages in this action.

Judgment dated

Dated the day of 18 .

(Signed)
(Address)
Solicitor for the

---

12. *Certiorari.*

In the High Court of Justice. 18 . No. R.S.C. April, 1880.
Division.

Between Plaintiff,

and

Defendant.

Seal in pursuance of order dated a writ of certiorari directed to

Dated the day of 18 .

(Signed)
(Address)
Solicitor for the

13. *Prohibition.*

R.S.C. April, 1880.

In the High Court of Justice. 18 . No.

Division.

In the matter of a certain now depending in the Court,

Between Plaintiff,

and

Defendant.

Seal a writ of prohibition directed to the Judge of the above-named Court and to the above-named plaintiff to prohibit them from further proceeding in the said

18

Dated the day of 18 .

(Signed)

(Address)

Solicitor for the

---

14. *Mandamus.*

R.S.C. April, 1880.

In the High Court of Justice. 18 . No.

Division.

Between Plaintiff,

and

Defendant.

Seal in pursuance of order dated a writ of mandamus directed to commanding to returnable

Dated the day of 18

(Signed)

(Address)

Solicitor for the

---

15. *Habeas Corpus ad Testificandum.*

R.S.C. April, 1890.

In the High Court of Justice. 18 . No.

Division.

Between

Plaintiff,

and

Defendant.

Seal in pursuance of order dated a writ of habeas corpus ad testificandum directed to the to bring before

Dated the day of 18

(Signed)

(Address),

Solicitor for the

16. *Commission to examine Witnesses.*

In the High Court of Justice. 18 . No. R.S.C. April, 1880.
Division.
Between
Plaintiff,
and
Defendant.

Seal in pursuance of order dated a writ in the nature of a mandamus or commission to examine witnesses directed to

Dated the day of 18 .

(Signed)
(Address)
Solicitor for the

---

17. *Commission of Partition.*

In the High Court of Justice. 18 . No. R.S.C. April 1880.
Division.
Between
Plaintiff,
and
Defendant.

Seal in pursuance of order dated a commission of partition directed to
Returnable

Dated the day of 18 .

(Signed)
(Address)
Solicitor for the

---

18. *Amended Summons.*

In the High Court of Justice. 18 . No. R.S.C. April, 1880.
Division.
Between
Plaintiff,
and
Defendant.

Amend in pursuance of order [*or* fiat] dated the writ of summons in this action by*

Dated the day of 18 .

(Signed)
(Address)
Solicitor for the

* Set out amendments when required.

19. *Renewed Summons.*

R.S.C. April, 1880.

In the High Court of Justice. 18 . No.
Division.

Between Plaintiff,

and

Defendant.

Seal in pursuance of order dated a renewed writ of summons in this action, indorsed as follows:

Dated the day of 18 .

(Signed)
(Address)
Solicitor for the

---

20. *Subpœna.*

R.S.C. April, 1880.

In the High Court of Justice. 18 . No.
Division.

Between Plaintiff,

and

Defendant.

Seal writ of subpœna
on behalf of the
directed to
returnable

Dated the day of 18 .

(Signed)
(Address)
Solicitor for the

---

21. *Entry of Appearance.*

R.S.C. April, 1880.

In the High Court of Justice. 18 . No.
Division.

Between Plaintiff,

and

Defendant.

Enter an appearance for
in this action

Dated the day of , 18 .

(Signed)
of*
Agent for
of

The said defendant require a statement of claim to be delivered.

* If this address be beyond three miles from the Royal Courts of Justice, an address for service within three miles thereof must be given.

22. *Entry of Appearance limiting Defence.*

In the High Court of Justice. 18 . No. R.S.C. April, 1880.
Division.

Between Plaintiff.

and

Defendant.

Enter an appearance for the defendant in this action. The said defendant limits his defence to part only of the property mentioned in the writ of summons, namely, to

The address of is

Dated the day of 18 .

(Signed)
of*
Agent for
of

The said defendant require a statement of claim to be delivered.

* If this address be beyond three miles from the Royal Courts of Justice, an address for service within three miles thereof must be given.

---

23. *Entry of Appearance*, Order L., Rule 4.

In the High Court of Justice. 18 . No. R.S.C. April, 1880.
Division.

Between Plaintiff,

and

Defendant.

Enter an appearance for who has been served with an order dated the day of to carry on and prosecute the proceedings in this action.

Dated the day of 18

(Signed)
of*
Agent for
of

* If this address be beyond three miles from the Royal Courts of Justice, an address for service within three miles thereof must be given.

---

24. *Entry of Appearance*, Order XVI., Rule 18.

In the High Court of Justice. 18 . No. R.S.C. April, 1880.
Division.

Between

Plaintiff,

and

Defendant.

Enter an appearance for to the notice issued in this action on the day of

18 by the defendant under the Rules of the Supreme Court, Order XVI., Rule 18.

Dated the day of 18 .

(Signed)
of*
Agent for
of

The said defendant require a statement of claim to be delivered.

* If this address be beyond three miles from the Royal Courts of Justice, an address for service within three miles thereof must be given.

---

25. *Entry of Appearance to Counter-Claim.*

R.S.C. April, 1880.

In the High Court of Justice. 18 . No.
Division.

Between Plaintiff,

and

Defendant.

Enter an appearance for to the counter-claim of the above-named defendant in this action.

Dated the day of 18 .

(Signed)
of*
Agent for
of

* If this address be beyond three miles from the Royal Courts of Justice, an address for service within three miles thereof must be given.

---

26. *Entry of Action for Trial.*

R.S.C. April, 1880.

In the High Court of Justice. 18 . No.
Division.

Between Plaintiff,

and

Defendant.

Enter this action for trial.

Dated the day of 18 .

(Signed)
(Address)

---

27. *Entry of Appeal.*

R.S.C. April, 1880.

In the High Court of Justice. 18 . No.
Division.

Between Plaintiff,

and

Defendant.

Enter this appeal from the order [*or* judgment] of
in this action, dated the day of
18 .

Dated the day of 18 .

(Signed)
(Address)

---

28. *Entry of Demurrer for Argument.*

In the High Court of Justice. 18 . No. R.S.C. April, 1880.
Division.

Between Plaintiff,

and

Defendant.

Enter for argument the demurrer of
to the
in this action.

Dated the day of 18 .

(Signed)
(Address)

---

29. *Entry for Argument generally.*

In the High Court of Justice. 18 . No. R.S.C. April, 1880.
Division.

Between Plaintiff,

and

Defendant.

Set down for argument the

Dated the day of , 18 .

(Signed)
(Address)

---

30. *Entry of Special Case.*

In the High Court of Justice. 18 . No. R.S.C. April, 1880.
Division.

Between Plaintiff,

and

Defendant.

Set down the dated the day of
18 , of Mr. the referee in this
for hearing as a special case.

Dated the day of 18 .

(Signed)
(Address)

31. *Memorandum of Service of Notice of Judgment.*

R. S. C. April, 1880.

In the High Court of Justice. 18 . No.

Division.

Between Plaintiff,

and

Defendant.

Enter memorandum of service of notice of judgment made in this action, and dated the day of , 18 , on the under-mentioned persons, viz. :—

Name of Party served.	Date of Service.

Dated the day of , 18 .

(Signed)

(Address)

---

32. *Search.*

R.S.C. April, 1880.

In the High Court of Justice. 18 . No.

Division.

v.

Search for

Dated the day of , 18 .

(Signed)

(Address)

Agent for

Solicitor for

APPENDIX (F).

Forms of Writs.

1. *Writ of Fieri Facias.*

187 . B. No.

In the High Court of Justice,
Division.
Between A. B., Plaintiff,
and
C. D. and others, Defendants.

Victoria, by the grace of God of the United Kingdom of Great Britain and Ireland Queen, Defender of the Faith.

To the sheriff of greeting.

We command you that of the goods and chattels of C. D. in your bailiwick you cause to be made the sum of *l.*, and also interest thereon at the rate of *l.* per centum per annum from the day of * which said sum of money and interest were lately before us in our High Court of Justice in a certain action [*or* certain actions, *as the case may be*] wherein A. B. is plaintiff and C. D. and others are defendants [*or* in a certain matter there depending, intituled "In the matter of E. F." *as the case may be*] by a judgment [*or* order, *as the case may be*] of our said Court, bearing date the day of adjudged [*or* ordered, *as the case may be*] to be paid by the said C. D. to A. B., together with certain costs in the said judgment [*or* order, *as the case may be*] mentioned, and which costs have been taxed and allowed by one of the taxing masters of our said Court at the sum of *l.* as appears by the certificate of the said taxing master, dated the day of . And that of the goods and chattels of the said C. D. in your bailiwick you further cause to be made the said sum of *l.* [costs] together with interest thereon at the rate of 4*l.* per centum per annum from the day of †and that you have that money and interest before

---

* Day of the judgment or order, or day on which money directed to be paid, or day from which interest is directed by the order to run, as the case may be.

† The date of the certificate of taxation. The writ *must* be so moulded as to follow the substance of the judgment or order. Before the Judicature Acts, interest on a judgment for costs would have run from the date of the incipitur: this form has had the effect of making an alteration in the date. (*Schroder* v. *Cleugh*, 46 L. J. 365.)

us in our said Court immediately after the execution hereof to be paid to the said A. B. in pursuance of the said judgment [*or* order, *as the case may be*]. And in what manner you shall have executed this our writ make appear to us in our said Court immediately after the execution thereof. And have there then this writ.

Witness, &c.

1*a*. *Fieri Facias on Order for Costs.*

R.S.C. April, 1880.

In the High Court of Justice. 18 . No.

Division.

Between

Plaintiff,

and

Defendant.

VICTORIA, by the Grace of God of the United Kingdom of Great Britain and Ireland Queen, Defender of the Faith, to the sheriff of greeting: We command you, that of the goods and chattels of

in your bailiwick you cause to be made the sum of

for certain costs which by an order of our High Court of Justice, dated the day of 18

were ordered to be paid by the said

to

and which have been taxed and allowed at the said sum, and interest on the said sum at the rate of 4*l*. per centum per annum from the day of 18 , and that you have the said sum and interest before us in our said Court, immediately after the execution hereof, to be rendered to the said

And in what manner you shall have executed this our writ make appear to us immediately after the execution hereof. And have there then this writ.

Witness, HUGH MACCALMONT, EARL CAIRNS, Lord High Chancellor of Great Britain, the day of 18 .

Levy *l*. and *l*. for costs of execution, &c., and also interest on *l*. at 4*l*. per centum per annum from the day of 18 , until payment; besides sheriff's poundage, officers' fees, costs of levying, and all other legal incidental expenses.

This writ was issued by
of
agent for of
solicitor for the

The is a and resides
at
in your bailiwick.

---

2. *Writ of Elegit.*

187 . B. No.

In the High Court of Justice,
Division.
Between A. B., Plaintiff,
and
C. D. and others, Defendants.

VICTORIA, by the grace of God of the United Kingdom of Great Britain and Ireland Queen, Defender of the Faith.

To the sheriff of greeting.

Whereas lately in our High Court of Justice in a certain action [*or* certain actions, *as the case may be*] there depending, wherein A. B. is plaintiff and C. D. and others are defendants [*or* in a certain matter there depending, intituled "In the matter of E. F.," *as the case may be*] by a judgment [*or* order, *as the case may be*] of our said Court made in the said action [*or* matter, *as the case may be*], and bearing date the day of , it was adjudged [*or* ordered, *as the case may be*] that C. D. should pay unto A. B. the sum of *l.*, together with interest thereon after the rate of *l.* per centum per annum from the day of , together also with certain costs as in the said judgment [*or* order, *as the case may be*] mentioned, and which costs have been taxed and allowed by one of the taxing masters of our said Court, at the sum of *l.* as appears by the certificate of the said taxing master, dated the day of . And afterwards the said A. B. came into our said Court, and according to the statute in such case made and provided, chose to be delivered to him all the goods and chattels of the said C. D. in your bailiwick, except his oxen and beasts of the plough, and also all such lands, tenements, rectories, tithes, rents, and hereditaments, including lands and hereditaments of copyhold or customary tenure, in your bailiwick as the said C. D., or any one in trust for him, was seised or possessed of on the day of in the year of our Lord * or at any time afterwards, or over which the said C. D. on the said day of , or at any time afterwards had any disposing power which he might without the

---

* The day on which the judgment or order was made.

assent of any other person exercise for his own benefit, to hold to him the said goods and chattels as his proper goods and chattels, and to hold the said lands, tenements, rectories, tithes, rents, and hereditaments respectively, according to the nature and tenure thereof, to him and to his assigns, until the said two several sums of *l.* and *l.*, together with interest upon the said sum of *l.*, at the rate of *l.* per centum per annum from the said day of and on the said sum of *l.* (costs) at the rate of 4*l.* per centum per annum from the day of shall have been levied. Therefore we command you that without delay you cause to be delivered to the said A. B. by a reasonable price and extent all the goods and chattels of the said C. D. in your bailiwick, except his oxen and beasts of the plough, and also all such lands and tenements, rectories, tithes, rents, and hereditaments, including lands and hereditaments of copyhold or customary tenure, in your bailiwick as the said C. D., or any person or persons in trust for him was or were seised or possessed of on the said day of * or at any time afterwards, or over which the said C. D. on the said day of *, or at any time afterwards had any disposing power which he might without the assent of any other person, exercise for his own benefit, to hold the said goods and chattels to the said A. B., as his proper goods and chattels, and also to hold the said lands, tenements, rectories, tithes, rents, and hereditaments respectively, according to the nature and tenure thereof, to him and to his assigns until the said two several sums of *l.* and *l.*, together with interest as aforesaid, shall have been levied. And in what manner you shall have executed this our writ make appear to us in our Court aforesaid, immediately after the execution thereof, under your seals, and the seals of those by whose oath you shall make the said extent and appraisement. And have there then this writ.

Witness ourselves at Westminster, &c.

---

3. *Writ of Venditioni Exponas.*

1875. B. No.

In the High Court of Justice,
Division.
Between A. B., Plaintiff,
and
C. D. and others, Defendants.

VICTORIA, by the grace of God of the United Kingdom of Great Britain and Ireland Queen, Defender of the Faith.

---

* The day on which the decree or order was made.

To the sheriff of greeting.

Whereas by our writ we lately commanded you that of the goods and chattels of C. D. [*here recite the fieri facias to the end*]. And on the day of you returned to us in the Division of our High Court of Justice aforesaid, that by virtue of the said writ to you directed you had taken goods and chattels of the said C. D. to the value of the money and interest aforesaid, which said goods and chattels remained in your hands unsold for want of buyers. Therefore we, being desirous that the said A. B. should be satisfied his money and interest aforesaid, command you that you expose to sale and sell, or cause to be sold, the goods and chattels of the said C. D., by you in form aforesaid taken, and every part thereof, for the best price that can be gotten for the same, and have the money arising from such sale before us in our said Court of Justice immediately after the execution hereof, to be paid to the said A. B. And have there then this writ.

Witness ourself at Westminster, the day of , in the year of our reign.

---

4. *Writ of Fieri facias de Bonis Ecclesiasticis.*

1875. B. No.

In the High Court of Justice.

Division.

Between A. B., Plaintiff,

and

C. D. and others, Defendants.

VICTORIA, by the grace of God of the United Kingdom of Great Britain and Ireland Queen, Defender of the Faith: To the Right Reverend Father in God [*John*] by Divine permission Lord Bishop of greeting: We command you, that of the ecclesiastical goods of C. D., clerk in your diocese, you cause to be made *l.*, which lately before us in our High Court of Justice in a certain action [*or* certain actions, *as the case may be*] wherein A. B. is plaintiff and C. D. is defendant [*or* in a certain matter there depending, intituled "In the matter of E. F." *as the case may be*], by a judgment [*or* order, *as the case may be*] of our said Court bearing date the day of , was adjudged [*or* ordered, *as the case may be*] to be paid by the said C. D. to the said A. B., together with interest on the said sum of at the rate of *l.* per centum per annum, from the day of , and have that money, together with such interest as aforesaid, before us in our said Court immediately after the execution hereof, to be rendered to the said A. B., for that our sheriff of returned to us in our said Court on [*or* "at a day now past"] that the said C. D.

had not any goods or chattels or any lay fee in his bailiwick whereof he could cause to be made the said *l.* and interest aforesaid or any part thereof, and that the said C. D. was a beneficed clerk (to wit) rector of rectory [*or* vicar of the vicarage] and parish church of in the said sheriff's county, and within your diocese [*as in the return*], and in what manner you shall have executed this our writ make appear to us in the said Court immediately after the execution hereof, and have you there then this writ. Witness ourself at Westminster, the day of , in the year of our Lord .

---

5. *Writ of Fieri Facias to the Archbishop de Bonis Ecclesiasticis during the vacancy of a Bishop's See.*

VICTORIA [&c. *as in the preceding form*]: To the Right Reverend Father in God [*John*] by Divine Providence Lord Archbishop of Canterbury, Primate of all England and Metropolitan, greeting: We command you, that of the ecclesiastical goods of C. D., clerk in the diocese of which is within the province of Canterbury, as ordinary of that church, the episcopal see of now being vacant, you cause to be made [&c., *conclude as in the preceding form*].

---

6. *Writ of Sequestrari Facias de Bonis Ecclesiasticis.*

1875. B. No.

In the High Court of Justice.
Division.
Between A. B., Plaintiff,
and
C. D. and others, Defendants.

VICTORIA, by the grace of God of the United Kingdom of Great Britain and Ireland Queen, Defender of the Faith: To the Right Reverend Father in God [*John*] by Divine permission Lord Bishop of greeting: Whereas we lately commanded our sheriff of that he should omit not by reason of any liberty of his county, but that he should enter the same, and cause [to be made, *if after the return to a fieri facias, or* delivered, *if after the return to an elegit, &c., and in either case recite the former writ*]. And whereupon our said sheriff of on [*or* "at a day past"] returned to us in the Division of our said Court of Justice, that the said C. D. was a beneficed clerk; that is to say, rector of the rectory [*or* vicar of the vicarage] and parish church of in the county of , and within your diocese, and that he had not any goods or chattels, or

any lay fee in his bailiwick [*here follow the words of the sheriff's return*]. Therefore, we command you that you enter into the said rectory [*or* vicarage] and parish church of , and take and sequester the same into your possession, and that you hold the same in your possession until you shall have levied the said *l.* and interest aforesaid, of the rents, tithes, rent-charges in lieu of tithes, oblations, obventions, fruits, issues, and profits thereof, and other ecclesiastical goods in your diocese of and belonging to the said rectory [*or* vicarage] and parish church of and to the said C. D. as rector [or vicar] thereof to be rendered to the said A. B., and what you shall do therein make appear to us in our said Court immediately after the execution hereof, and have you there then this writ. Witness ourself at Westminster, the day of in the year of our Lord .

---

7. *Writ of Possession.*

187 . B. No.

In the High Court of Justice,
Division.
Between A. B., Plaintiff,
and
C. D. and others, Defendants.

VICTORIA, to the sheriff of greeting: Whereas lately in our High Court of Justice, by a judgment of the Division of the same Court [A. B. recovered] *or* [E. F. was ordered to deliver to A. B.] possession of all that with the appurtenances in your bailiwick: Therefore, we command you that you omit not by reason of any liberty of your county, but that you enter the same, and without delay you cause the said A. B. to have possession of the said land and premises with the appurtenances. And in what manner you have executed this our writ make appear to the Judges of the Division of our High Court of Justice immediately after the execution hereof, and have you there then this writ. Witness, &c.

---

8. *Writ of Delivery.*

187 . B. No.

In the High Court of Justice,
Division.
Between A. B., Plaintiff,
and
C. D. and others, Defendants.

VICTORIA, by the grace of God of the United Kingdom of Great Britain and Ireland Queen, Defender of the Faith, to the sheriff

of greeting: We command you that without delay you cause the following chattels, that is to say [*here enumerate the chattels recovered by the judgment for the return of which execution has been ordered to issue*], to be returned to A. B., which the said A. B. lately in our recovered against C. D. [*or* C. D. was ordered to deliver to the said A. B.] in an action in the Division of our said Court.* And we further command you, that if the said chattels cannot be found in your bailiwick, you distrain the said C. D. by all his lands and chattels in your bailiwick, so that neither the said C. D. nor any one for him do lay hands on the same until the said C. D. render to the said A. B. the said chattels; and in what manner you shall have executed this our writ make appear to the Judges of the Division of our High Court of Justice, immediately after the execution hereof, and have you there then this writ. Witness, &c.

The like, but instead of a distress until the chattel is returned, commanding the sheriff to levy on defendant's goods the assessed value of it.

[*Proceed as in the preceding form until the *, and then thus:*] And we further command you, that if the said chattels cannot be found in your bailiwick, of the goods and chattels of the said C. D. in your bailiwick, you cause to be made *l.* [*the assessed value of the chattels*], and in what manner you shall have executed this our writ make appear to the Judges of the Division of our High Court of Justice at Westminster, immediately after the execution hereof, and have you there then this writ. Witness, &c.

---

9. *Writ of Attachment.*

187 . B. No.

In the High Court of Justice,
Division.
Between A. B., Plaintiff,
and
C. D. and others, Defendants.

VICTORIA, &c., to the sheriff of greeting: We command you to attach C. D., so as to have him before us in the Division of our High Court of Justice wheresoever the said Court shall then be, there to answer to us, as well touching a contempt which he it is alleged hath committed against us, as also such other matters as shall be then and there laid to his charge, and further to perform and abide such order as our said Court shall make in this behalf, and hereof fail not, and bring this writ with you. Witness, &c.

10. *Writ of Sequestration.*

187 . B. No.

In the High Court of Justice,
Division.
Between A. B., Plaintiff,
and
C. D., and others, Defendants.

VICTORIA, &c.

To [*names of not less than four Commissioners*] greeting.

Whereas lately in the Division of our High Court of Justice in a certain action there depending, wherein A. B. is plaintiff, and C. D. and others, are defendants [*or*, in a certain matter then depending, intituled "In the matter of E. F.," *as the case may be*] by a judgment [*or* order, *as the case may be*] of our said Court made in the said action [*or* matter], and bearing date the day of 187 , it was ordered that the said C. D. should [pay into court to the credit of the said action the sum of *l.*, *or*, *as the case may be*]. Know ye, therefore, that we, in confidence of your prudence and fidelity, have given, and by these presents do give to you, or any three or two of you, full power and authority to enter upon all the messuages, lands, tenements, and real estate whatsoever of the said C. D., and to collect, receive, and sequester into your hands not only all the rents and profits of his said messuages, lands, tenements and real estate, but also all his goods, chattels, and personal estates whatsoever: and therefore we command you, any three or two of you, that you do at certain proper and convenient days and hours, go to and enter upon all the messuages, lands, tenements, and real estates of the said C. D., and that you do collect, take, and get into your hands not only the rents and profits of his said real estate, but also all his goods, chattels, and personal estate, and detain and keep the same under sequestration in your hands until the said C. D. shall [pay into Court to the credit of the said action the sum of *l. or, as the case may be,*] clear his contempt, and our said Court make other order to the contrary. Witness, &c.

---

11. *Delivery or Assessed Value.*

In the High Court of Justice. 18 . No. R.S.C. April, 1880.
Division.
Between Plaintiff,
and
Defendant.

VICTORIA, by the Grace of God of the United Kingdom of Great Britain and Ireland Queen, Defender of the Faith, to the sheriff

of

greeting.

We command you that without delay you cause to be returned to the following chattels, namely*

which the said

lately†

in an action in our High Court of Justice.

And we further command you, that if the said chattels cannot be found in your bailiwick, then of the goods and chattels of the said in your bailiwick you cause to be made *l.*‡ And in what manner you shall have executed this our writ make appear to us in our said Court immediately after the execution hereof. And have there then this writ.

Witness, HUGH MACCALMONT, EARL CAIRNS, Lord High Chancellor of Great Britain, the day of in the year of Our Lord One thousand eight hundred and

If the chattels cannot be found in your bailiwick, levy *l.* the assessed value thereof, and interest thereon at 4*l.* per centum per annum, from the day of 18 , until payment, besides sheriff's poundage, officers' fees, costs of levying, and all other legal incidental expenses.

The writ was issued by
of
agent for
of
solicitor to the who reside at

The defendant is a
and reside at
in your bailiwick.

* Enumerate chattels recovered by judgment for the return of which execution has been ordered to issue.

† "Recovered against" or "was ordered to deliver to the said."

‡ The assessed value of the chattels.

---

12. *Distringas against Ex-Sheriff.*

R. S. C. April, 1880.

In the High Court of Justice.

Division. 18 . No.

Between Plaintiff,

and

Defendant.

VICTORIA, by the Grace of God of the United Kingdom of Great Britain and Ireland Queen, Defender of the Faith, to the sheriff of greeting.

We command you that you distrain late

sheriff of your county aforesaid by all his land and chattels in your bailiwick, so that neither he nor anyone by him do lay hands on the same until you shall have another command from us in that behalf, and that you answer to us for the issues of the same, so that the said

expose for sale and sell or cause to be sold for the best price that can be gotten for the same, those goods and chattels which were of in your bailiwick, to the value of *l.*,* the sum of *l.*, which lately before us in our High Court of Justice in a certain action wherein plaintiff and defendant, by a† of our said Court bearing date the day of, was‡ to be paid by the said to the said, and of the sum of *l.*, the amount at which the costs in the said† mentioned have been taxed and allowed, and of interest on the said sum of *l.* at the rate of 4*l.* per centum per annum from the day of, and on the said sum of *l.* at the same rate from the day of, which goods and chattels he lately took by virtue of our writ, and which remain in his hand for want of buyers, as the said late sheriff hath lately returned to us in our said Court. And have the money arising from such sale before us in our said Court immediately after the execution hereof, to be paid to the said, and have there then this writ.

* "the amount of" or "part of."

† "judgment" or "order."

‡ "adjudged" or "ordered."

Witness, Hugh MacCalmont, Earl Cairns, Lord High Chancellor of Great Britain, the day of in the year of Our Lord One thousand eight hundred and

This writ was issued by
of
agent for
of
solicitor for the who reside at

The defendant is a and resides at in your bailiwick.

---

13. *Fieri Facias on Judgment removed from Lord Mayor's Court.*

In the High Court of Justice. 18 . No. R. S. C. April, 1880.
Division.

Between

Plaintiff,

and

Defendant.

Victoria, by the Grace of God of the United Kingdom of Great

Britain and Ireland Queen, Defender of the Faith, to the sheriff of greeting:

Whereas by the judgment of the Mayor's Court, London, it has been adjudged that the said recover, against the said the sum of*

* Debt and costs.

And whereas this judgment has been removed into our High Court of Justice, and has become of the same effect as a judgment recovered in that court:

And whereas the costs attendant on the removal of the said judgment were on the † day of 18 . taxed and allowed at ‡

† Day of removal.

‡ Costs of removal.

Therefore we command you, that of the goods and chattels of the said in your bailiwick, you cause to be made the said sums of * *l.* and ‡ *l.* with interest thereon at the rate of 4*l.* per centum per annum from the said † day of 18 , and that you have that money and interest before us in our said Court immediately after the execution hereof, to be rendered to the said

And in what manner you shall have executed this our writ make appear to us in our said Court immediately after the execution hereof. And have then there this writ.

Witness, Hugh MacCalmont, Earl Cairns, Lord High Chancellor of Great Britain, the day of in the year of Our Lord One thousand eight hundred and

Levy *l.*, and *l.* for costs of execution, and also interest on *l.* at 4*l.* per centum per annum, from the day of 18 , until payment; besides sheriff's poundage, officers' fees, costs of levying, and all other legal incidental expenses.

This writ was issued by
of
agent for
of
solicitor for the said plaintiff.

The defendant is a and resides at in your bailiwick.

APPENDIX (G).

1. *Subpœna ad Testificandum* (*General Form*).

R. S. C. April, 1880.

In the High Court of Justice. 18 . No.
Division.
Between Plaintiff,
and
Defendant.

VICTORIA, by the Grace of God of the United Kingdom of Great Britain and Ireland Queen, Defender of the Faith, to* greeting: We command you to attend before at on day the day of 18 at the hour of in the noon, and so from day to day until the above cause is tried, to give evidence on behalf of the† Witness, HUGH MACCALMONT, EARL CAIRNS, Lord High Chancellor of Great Britain, the day of in the year of Our Lord One thousand eight hundred and

* The names of three witnesses may be inserted.

† "Plaintiff" or "Defendant."

---

2. *Subpœna Duces Tecum* (*General Form*).

R. S. C. April, 1880.

In the High Court of Justice. 18 . No.
Division.
Between Plaintiff,
and
Defendant.

VICTORIA, by the Grace of God of the United Kingdom of Great Britain and Ireland Queen, Defender of the Faith, to* greeting: We command you to attend before at on day the day of 18 , at the hour of in the noon, and so from day to day until the above cause is tried, to give evidence on behalf of the and also to bring with you and produce at the time and place aforesaid† Witness, HUGH MACCALMONT, EARL CAIRNS, Lord High Chancellor of Great Britain, the day of in the year of Our Lord One thousand eight hundred and

* The names of three witnesses may be inserted.

† Specify documents to be produced.

---

3. *Subpœna ad Testificandum at Assizes.*

R. S. C. April, 1880.

In the High Court of Justice. 18 . No.

Division.

Between Plaintiff,

and

Defendant.

VICTORIA, by the Grace of God of the United Kingdom of Great Britain and Ireland Queen, Defender of the Faith, to* greeting: We command you to attend before our justices assigned to take the assizes in and for the county of to be holden at on day the day of 18 , at the hour of in the noon, and so from day to day during the said assizes until the above cause is tried, to give evidence on behalf of the

* The names of three witnesses may be inserted.

Witness, HUGH MACCALMONT, EARL CAIRNS, Lord High Chancellor of Great Britain, the day of in the year of Our Lord One thousand eight hundred and

---

4. *Subpœna Duces Tecum at Assizes.*

R. S. C. April, 1880.

In the High Court of Justice. 18 . No.

Division.

Between Plaintiff,

and

Defendant.

VICTORIA, by the Grace of God of the United Kingdom of Great Britain and Ireland Queen, Defender of the Faith, to* greeting: We command you to attend before our justices assigned to take the assizes in and for the county of to be holden at on day the day of 18 , at the hour of in the noon, and so from day to day during the said assizes, until the above cause is tried, to give evidence on behalf of the , and also to bring with you and produce at the time and place aforesaid†

* The names of three witnesses may be inserted.

† Specify documents to be produced.

Witness, HUGH MACCALMONT, EARL CAIRNS, Lord High Chancellor of Great Britain, the day of in the year of Our Lord One thousand eight hundred and

---

5. *Subpœna ad Testificandum at Sittings of High Court.*

R. S. C. April, 1880.

In the High Court of Justice, 18 . No.

Division.

Between

Plaintiff,

and

Defendant.

VICTORIA, by the Grace of God of the United Kingdom of Great Britain and Ireland Queen, Defender of the Faith, to* greeting: We command you to attend at the sittings of the Division of our High Court of Justice, for† to be holden at on day the day of 18 , at the hour of in the noon, and so from day to day during the said sittings, until the above cause is tried, to give evidence on behalf of the

* The names of three witnesses may be inserted.

† London or Westminster.

Witness, HUGH MACCALMONT, EARL CAIRNS, Lord High Chancellor of Great Britain, the day of in the year of Our Lord One thousand eight hundred and

---

6. *Subpœna Duces Tecum at Sittings of High Court.*

In the High Court of Justice, 18 . No. R. S. C. April, 1880.
Division.

Between

Plaintiff,

and

Defendant.

VICTORIA, by the Grace of God of the United Kingdom of Great Britain and Ireland Queen, Defender of the Faith, to* greeting:

We command you to attend at the sittings of the Division of our High Court of Justice for† , to be holden at on day the day of 18 , at the hour of o'clock in the noon, and so from day to day until the above cause is tried, to give evidence on behalf of the and also to bring with you and produce at the time and place aforesaid‡

* The names of three witnesses may be inserted.

† London or Westminster.

‡ Specify documents to be produced.

Witness, HUGH MACCALMONT, EARL CAIRNS, Lord High Chancellor of Great Britain, the day of in the year of Our Lord One thousand eight hundred and

---

7. *Writ of Inquiry for Assessment of Damages.*

In the High Court of Justice, 18 . No.
Division.

Between

Plaintiff,

and

Defendant.

VICTORIA, by the Grace of God of the United Kingdom of Great Britain and Ireland Queen, Defender of the Faith, to the sheriff of greeting:

Whereas it has been adjudged that the plaintiff recover against the defendant damages to be assessed

Therefore we command you, that by the oaths of twelve good and lawful men of your bailiwick you inquire what damages the plaintiff is entitled to recover under the said judgment, and that forthwith thereafter you send the inquisition which you shall take thereupon to our said Court, under your seal, and the seals of those by whose oaths you take the inquisition, together with this writ.

Witness, HUGH MACCALMONT, EARL CAIRNS, Lord High Chancellor of Great Britain, the day of in the year of Our Lord One thousand eight hundred and

This writ was issued by
of
agent for
of
solicitor for the who reside at

The defendant is a
and reside at
in your bailiwick

---

8. *Certiorari to County Court.*

R.S.C. April, 1880. In the High Court of Justice. 18 . No.
Division.

Between

Plaintiff,

and

Defendant.

VICTORIA, by the Grace of God of the United Kingdom of Great Britain and Ireland Queen, Defender of the Faith, to the Judge of the County Court holden at greeting:

We, willing for certain causes to be certified of a plaint levied in our Court before you against
at the suit of command you that you send to us forthwith in the Division of our High Court of Justice the said plaint with all things touching the same, as fully and entirely as the same remain in our said Court before you, by whatsoever names the parties may be called therein, together with this writ, that we may further cause to be done thereupon what of right we shall see fit to be done.

Witness, HUGH MACCALMONT, EARL CAIRNS, Lord High Chancellor of Great Britain, the day of , in the year of Our Lord One thousand eight hundred and

This writ was issued by
of
agent for
of
solicitor for the who reside at

---

9. *Certiorari (General).*

In the High Court of Justice. 18 . No. R.S.C. April, 1880.
Division.

Between

Plaintiff,

and

Defendant.

VICTORIA, by the Grace of God of the United Kingdom of Great Britain and Ireland Queen, Defender of the Faith, to the greeting:

We, willing for certain causes to be certified of command you that you send to us in our High Court of Justice on the day of the aforesaid, with all things touching the same, as fully and entirely as they remain in , together with this writ, that we may further cause to be done thereupon what of right we shall see fit to be done.

Witness, HUGH MACCALMONT, EARL CAIRNS, Lord High Chancellor of Great Britain, the day of , in the year of Our Lord One thousand eight hundred and

This writ was issued by
of
agent for
of
solicitor for the who reside at

---

10. *Prohibition.*

In the High Court of Justice. 18 . No. R.S.C. April, 1880.
Division.

Between

Plaintiff,

and

Defendant.

VICTORIA, by the Grace of God of the United Kingdom of Great Britain and Ireland Queen, Defender of the Faith, to the [judge of the County Court holden at] and to [*name of plaintiff*] of greeting:

Whereas we have been given to understand that you the said have [entered a plaint against] C. D. in the said Court, and that the said Court has no jurisdiction in the said [cause] or to hear and determine the said [plaint] by reason that [*state facts showing want of jurisdiction*].

We therefore hereby prohibit you from further proceeding in the said [action] in the said Court.

Witness, HUGH MACCALMONT, EARL CAIRNS, Lord High Chancellor of Great Britain, the day of in the year of Our Lord One thousand eight hundred and

This writ was issued by
of
agent for
of
solicitor for the who reside at

---

11. *Commission to Examine Witnesses.*

In the High Court of Justice. 18 . No.
Division.
Between Plaintiff,
and
Defendant.

VICTORIA, by the Grace of God of the United Kingdom of Great Britain and Ireland Queen, Defender of the Faith, to
of
and
of
Commissioners named by and on behalf of the
and to
of
and
of
Commissioners named by and on behalf of the
greeting: Know ye that we in confidence of your prudence and fidelity have appointed you and by these presents give you power and authority to examine on interrogatories and *vivâ voce* as hereinafter mentioned witnesses on behalf of the said
and respectively at
before you or any two of you, so that one Commissioner only on each side be present and act at the examination.—And we command you as follows:—

1. Both the said and the said shall be at liberty to examine on interrogatories and *vivâ voce* on the subject-matter thereof or arising out of the answers thereto, such witnesses as shall be produced on their behalf with liberty

to the other party to cross-examine the said witnesses on cross-interrogatories and *vivâ voce* on the subject-matters thereof, or arising out of the answers thereto, the party producing any witness for examination being at liberty to re-examine him *vivâ voce;* and all such additional *vivâ voce* questions, whether on examination, cross-examination, or re-examination, shall be reduced into writing, and with the answers thereto shall be returned with the said Commission.

2. Not less than days before the examination of any witness on behalf of either of the said parties, notice in writing, signed by any one of you, the Commissioners of the party on whose behalf the witness is to be examined, and stating the time and place of the intended examination and the names of the witnesses to be examined, shall be given to the Commissioners of the other party by delivering the notice to them or by leaving it at their usual place of abode or business, and if the Commissioners or Commissioner of that party neglect to attend pursuant to the notice, then one of you, the Commissioners of the party on whose behalf the notice is given, shall be at liberty to proceed with and take the examination of the witness or witnesses *ex parte*, and adjourn any meeting or meetings, or continue the same from day to day until all the witnesses intended to be examined, by virtue of the notice have been examined, without giving any further or other notice of the subsequent meeting or meetings.

3. In the event of any witness on his examination, cross-examination, or re-examination producing any book, document letter, paper, or writing, and refusing for good cause to be stated in his deposition to part with the original thereof, then a copy thereof, or extract therefrom, certified by the Commissioners or Commissioner present and acting to be a true and correct copy or extract shall be annexed to the witnesses' deposition.

4. Each witness to be examined under this Commission shall be examined on oath, affirmation, or otherwise, in accordance with his religion by or before the Commissioners or Commissioner present at the examination.

5. If any one or more of the witnesses do not understand the English language (the interrogatories, cross-interrogatories, and *vivâ voce* questions, if any, being previously translated into the language with which he or they is or are conversant), then the examination shall be taken in English through the medium of an interpreter or interpreters to be nominated by the Commissioners or Commissioner present at the examination, and to be previously sworn according to his or their several religions by or before the said Commissioners or Commissioner truly to interpret the questions to be put to the witness and his answers thereto.

6. The depositions to be taken under this Commission shall be

subscribed by the witness or witnesses, and by the Commissioners or Commissioner who shall have taken the depositions.

7. The interrogatories, cross-interrogatories, and depositions, together with any documents referred to therein, or certified copies thereof or extracts therefrom, shall be sent to the Senior Master of the Supreme Court of Judicature on or before the day of , enclosed in a cover under the seals or seal of the Commissioners or Commissioner.

8. Before you or any of you, in any manner act in the execution hereof you shall severally take the oath hereon indorsed on the Holy Evangelists or otherwise in such other manner as is sanctioned by the form of your several religions and is considered by you respectively to be binding on your respective consciences.

And we give you or any one of you authority to administer such oath to the other or others of you.

Witness, HUGH MACCALMONT, EARL CAIRNS, Lord High Chancellor of Great Britain, the day of , in the year of Our Lord One thousand eight hundred and

This writ was issued by
of
agent for
of
solicitor for the
who reside at

Witnesses' Oath.

You are true answer to make to all such questions as shall be asked you, without favour or affection to either party, and therein you shall speak the truth, the whole truth, and nothing but the the truth. So help you God.

Commissioners' Oath.

You shall, according to the best of your skill and knowledge, truly and faithfully, and without partiality to any or either of the parties in this cause, take the examinations and depositions of all and every witness and witnesses produced and examined by virtue of the commission within written. So help you God.

Interpreter's Oath.

You shall truly and faithfully, and without partiality to any or either of the parties in this cause, and to the best of your ability, interpret and translate the oath or oaths, affirmation or affirmations which he shall administer to, and all and every the questions which shall be exhibited or put to, all and every witness and witnesses produced before and examined by the commissioners named in the commission within written, as far forth as you are directed and employed by the said commissioners to interpret and translate the same out of the English into the lan-

guage of such witness or witnesses, and also in like manner to interpret and translate the respective depositions taken and made to such questions out of the language of such witness or witnesses into the English language. So help you God.

Clerk's Oath.

You shall truly, faithfully, and without partiality to any or either of the parties in this cause, take, write down, transcribe, and engross all and every the questions which shall be exhibited or put to all and every witness and witnesses, and also the depositions of all and every such witness and witnesses produced before and examined by the said commissioners named in the commission within written, as far forth as you are directed and employed by the commissioners to take, write down, transcribe or engross the said questions and depositions. So help you God.

Direction of Interrogatories, &c., when returned by the Commissioners:—

THE SENIOR MASTER OF THE SUPREME COURT OF JUDICATURE, ROYAL COURTS OF JUSTICE, LONDON.

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12. *Habeas Corpus ad Testificandum.*

In the High Court of Justice. 18 . No. R.S.C. April, 1880.

Division.

Between

Plaintiff,

and

Defendant.

VICTORIA, by the Grace of God of the United Kingdom of Great Britain and Ireland Queen, Defender of the Faith, to the [keeper of our prison at]

We command you that you bring . , who it is said is detained in our prison under your custody , before at on day the day of at the hour of in the noon, and so from day to day until the above action is tried, to give evidence on behalf of the . And that immediately after the said shall have so given his evidence you safely conduct him to the prison from which he shall have been brought.

Witness, HUGH MACCALMONT, EARL CAIRNS, Lord High Chancellor of Great Britain, the day of , in the year of Our Lord One thousand eight hundred and

This writ was issued by of agent for of solicitor for the who reside at

APPENDIX (H).

SUMMONSES AND ORDERS.

1. *Summonses (General Form).*

R.S.C. April, 1880.

In the High Court of Justice. 18 . No.
Division.

Between

Plaintiff,

and

Defendant.

Let all parties concerned attend the Judge [*or* Master] in Chambers on day the day of 18 , at o'clock in the noon, on the hearing of an application on the part of

Dated the day of 18 .

This summons was taken out by of solicitor for

To

---

2. *Order (General Form).*

R.S.C. April, 1880.

In the High Court of Justice. 18 . No.
Division.

*Insert name of Judge or Master.

* Judge [*or* Master] in Chambers.

Between

Plaintiff,

and

Defendant.

Upon hearing , and upon reading the affidavit of filed the day of 18 , and

It is ordered

and that the costs of this application be

Dated the day of 18 .

---

3. *Order for Time.*

R. S. C. April, 1880.

In the High Court of Justice. 18 . No.
Division.

Master in Chambers.

Between

Plaintiff,

and

Defendant.

Upon hearing , and upon reading the affidavit of filed the day of 18 , and

It is ordered that the shall have time, and that the costs of this application be

Dated the day of 18 .

---

4. *Order under Order XIV., No.* 1.

In the High Court of Justice. 18 . No.

Division.

Master in Chambers.

Between

Plaintiff,

and

Defendant.

R.S.C. April, 1880. Final judgment for plaintiff.

Upon hearing , and upon reading the affidavit of filed the day of 18 , and

It is ordered that the plaintiff may sign final judgment in this action for the amount indorsed on the writ, with interest, if any, and costs to be taxed, and that the costs of this application be

Dated the day of 18 .

---

5. *Order under Order XIV.*, No. 2.

In the High Court of Justice. 18 . No.

Division.

Master in Chambers.

Between

Plaintiff,

and

Defendant.

R.S.C. April, 1880. Unconditional leave to defend.

Upon hearing
and upon reading the affidavit of
filed the day of 18 , and

It is ordered that the defendant be at liberty to defend this action by delivering a statement of defence within days after delivery of the plaintiff's statement of claim, and that the costs of this application be

Dated the day of 18 .

---

6. *Order under Order XIV.*, No. 3.

R.S.C. April, 1880.

In the High Court of Justice. 18 . No.

Division.

Master in Chambers.

Conditional leave to defend.

Between Plaintiff,

and

Defendant.

Upon hearing

and upon reading the affidavit of

filed the day of 18 , and

It is ordered that if the defendant pay into Court within a week from the date of this order the sum of *l.*, he be at liberty to defend this action by delivering a statement of defence within days after delivery of the plaintiff's statement of claim, but if that sum be not so paid the plaintiff be at liberty to sign final judgment for the amount indorsed on the writ of summons, with interest, if any, and costs, and that in either event the costs of this application be

Dated the day of 18 .

---

7. *Order under Order XIV.*, No. 4.

R.S.C. April, 1880.

In the High Court of Justice. 18 . No.

Division.

Uncon-ditional as to part.

Between Plaintiff,

and

Defendant,

Upon hearing

and upon reading the affidavit of

filed the day of 18 , and

It is ordered that if the defendant pay into Court within a week from the date of this order the sum of *l.*, he be at liberty to defend this action as to the whole of the plaintiff's claim.

And it is ordered that if that sum be not so paid, the plaintiff be at liberty to sign judgment for that sum and the defendant be at liberty to defend this action as to the residue of the plaintiff's claim.

And it is ordered that in either event the statement of defence be delivered within days after delivery of the plaintiff's statement of claim, and that the costs of this application be

Dated the day of 18 .

---

8. *Order to Amend.*

In the High Court of Justice. 18 . No. . R.S.C. April, 1880.
Division.
Master in Chambers.

Between

Plaintiff,

and

Defendant.

Upon hearing
and upon reading the affidavit of
filed the day of 18 , and

It is ordered that the plaintiff be at liberty to amend the writ of summons in this action by
and that the costs of this application be

Dated the day of , 18 .

---

9. *Order for Particulars (Partnership).*

In the High Court of Justice. 18 . No. R.S.C. April, 1880.
Division.
Master in Chambers.

Between

Plaintiff,

and,

Defendant.

Upon hearing
and upon reading the affidavit of
filed the day of 18 , and

It is ordered that the furnish the with a statement in writing, verified by affidavit, setting forth the names of the persons constituting the members or co-partners of their firm, pursuant to the rules of the Supreme Court Order XVI., Rule 10, and that the costs of this application be

Dated the day of , 18 .

---

10. *Order for Particulars (General).*

In the High Court of Justice. 18 . No. R.C.S. April, 1880.
Division.
Master in Chambers.

Between

Plaintiff,

and

Defendant.

Upon hearing

and upon reading the affidavit of
filed the day of 18 , and
It is ordered that the plaintiff deliver to the defendant an account in writing of the particulars of the plaintiff's claim in this action,
and
that unless such particulars be delivered within days from the date of this order all farther proceedings be stayed until the delivery thereof, and that the costs of this application be
Dated the day of 18 .

---

11. *Order for Particulars (Accident Case).*

R.S.C. April, 1880.

In the High Court of Justice. 18 . No.
Division.
Master in Chambers.
Between
Plaintiff,
and
Defendant.

Upon hearing
and upon reading the affidavit of
filed the day of 18 , and
It is ordered that the plaintiff deliver to the defendant an account in writing of the particulars of the injuries and expenses mentioned in the statement of claim, together with the time and place of the accident, number of the , and the particular acts of negligence complained of, and that unless such particulars be delivered within days from the date of this order all further proceedings in this action be stayed until the delivery thereof, and that the costs of this application be
Dated the day 18 .

---

12. *Order to Discharge or Vary on Application by Third Party.*

R.S.C. April, 1880.

In the High Court of Justice. 18 . No.
Division.
Master in Chambers.
Between
Plaintiff,
and
Defendant.

Upon hearing
and upon reading the affidavit of
filed the day of 18 , and

It is ordered that the order of
in this action dated the day of 18 , be
discharged [*or* varied by], and that the costs of this
application be
Dated the day of 18 .

---

13. *Order to Dismiss for Want of Prosecution.*

R.S.C. April, 1880.

In the High Court of Justice.
Division. 18 . No.
Master in Chambers.
Between
Plaintiff,
and
Defendant.

Upon hearing
and upon reading the affidavit of
filed the day of 18 , and
It is ordered that this action be, for want of prosecution, dismissed with costs to be taxed and paid to the defendant by the plaintiff, and that the costs of this application be
Dated the day of 18 .

---

14. *Order for Delivery of Interrogatories.*

R.S.C. April, 1880.

In the High Court of Justice.
Division. 18 . No.
Master in Chambers.
Between
Plaintiff,
and
Defendant.

Upon hearing
and upon reading the affidavit of
filed the day of 18 , and
It is ordered that the be at liberty to deliver
to the interrogatories in writing,
and that the said do, within days from the
date of this order, answer the interrogatories in writing by
affidavit, and that the costs of this application be
Dated the day of 18 .

---

15. *Order for Affidavit as to Documents.*

R.S.C. April, 1880. In the High Court of Justice.

Division. 18 . No.

Master in Chambers.

Between

Plaintiff,

and

Defendant.

Upon hearing

It is ordered that the do, within days from the date of this order, answer on affidavit, stating what documents are or have been in possession or power relating to the matters in question in this action, and that the costs of this application be

Dated the day of 18 .

---

16. *Order to produce Documents for Inspection.*

R.S.C. April, 1880. In the High Court of Justice.

Division. 18 . No.

Master in Chambers.

Between

Plaintiff,

and

Defendant.

Upon hearing

, and upon reading the affidavit of filed the day of 18, and

It is ordered that the do, at all seasonable times, on reasonable notice, produce at the office of , solicitor, situate at , the folllowing documents, namely, , and that the be at liberty to inspect and peruse the documents so produced, and to take copies and abstracts thereof and extracts therefrom, at expense, and that in the meantime all further proceedings be stayed, and that the costs of this application be

Dated the day of , 18 .

---

17. *Order for Production (Underwriters).*

R.S.C. April, 1880.

In the High Court of Justice.

Division. 18 . No.

Master in Chambers.

Between

Plaintiff,

and

Defendant.

Upon hearing

, and upon reading the affidavit of filed the day of 18 , and

It is ordered that the do produce and show to the upon oath all insurance slips, policies, letters of instruction, or other orders for effecting such slips or policies, or relating to the insurance or the subject-matter of the insurance on the ship or the cargo on board thereof, or the freight thereby, and also all documents relating to the sailing or alleged loss of the said ship the cargo on board thereof and the freight thereby, and all letters and correspondence with any person or persons in any manner relating to the effecting the insurance on the said ship, the cargo on board thereof, or the freight thereby, or any other insurance whatsoever effected on the said ship, or the cargo on board thereof, or the freight thereby on the voyage insured by, or relating to the policy sued upon in this action, or any other policy whatsoever effected on the said ship, or the cargo on board thereof, or the freight thereby on the same voyage. Also all correspondence between the captain or agent of the vessel and any other person, with the owner or any person or persons previous to the commencement of or during the voyage upon which the alleged loss happened. Also all protests, surveys, log books, charter-parties, tradesmen's bills for repairs, average statements, letters, invoices, bills of parcels, bills of lading, manifests, accounts, accounts-current, accounts-sales, bills of exchange, receipts, vouchers, books, documents, correspondence papers, and writings, (whether originals, duplicates, or copies respectively,) which now are in the custody, possession, or power, of the
his brokers, solicitors, or agents, in any way relating or referring to the matters in question in this action, with liberty for the to inspect and take copies of or extracts from the same or any of them, and that in the meantime all further proceedings be stayed, and that the costs of this application be

Dated the day of 18 .

18. *Order for Service out of Jurisdiction.*

R.S.C. April, 1880.

In the High Court of Justice.

Division. 18 . No.

Judge in Chambers.

Between

Plaintiff,

and

Defendant.

Upon hearing

and upon reading the affidavit of , filed the day of 18 , and

It is ordered that the plaintiff be at liberty to issue a writ for service out of the jurisdiction against

And it is further ordered that the time for appearance to the said writ be within days after the service thereof, and that the costs of this application be

Dated the day of 18 .

---

19. *Order for Substituted Service.*

R.S.C. April, 1880.

In the High Court of Justice.

Division. 18 . No.

Master in Chambers.

Between

Plaintiff,

and

Defendant.

Upon hearing

, and upon reading the affidavit of filed the day of 18 , and

It is ordered that service of a copy of this order, and of a copy of the writ of summons in this action, by sending the same by a pre-paid post letter, addressed to the defendant at , shall be good and sufficient service of the writ.

Dated the day of 18 .

---

20. *Order for Renewal of Writ.*

R.S.C. April, 1880.

In the High Court of Justice.

Division. 18 . No.

Master in Chambers.

Between

Plaintiff,

and

Defendant.

Upon hearing
and upon reading the affidavit of
filed the day of 18, and

It is ordered that the writ in this action be renewed for six months from the date of its renewal, pursuant to the Rules of the Supreme Court, Order VIII., Rule 1.

Dated the day of 18 .

---

21. *Order for Issue or Notice Claiming Contribution.*

R.S.C. April, 1880.

In the High Court of Justice.
Division. 18. No.

Between

Plaintiff,

and

Defendant.

Upon hearing
and upon reading the affidavit of
filed the day of 18 , and

It is ordered that the defendant
be at liberty to issue a notice claiming over against
, pursuant to the Rules of the Supreme Court Order XVI., Rule 18.

Dated the day of 18 .

---

22. *Order of Reference.*

R.S.C. April, 1880.

In the High Court of Justice.
Division. 18. No.
Master in Chambers.

Between

Plaintiff,

and

Defendant.

Upon hearing
and by consent
it is ordered as follows :

1. [*State matters to be referred*] shall be referred to the award of

2. The arbitrator shall have all the powers as to certifying and amending of a Judge of the High Court of Justice.

3. The arbitrator shall make and publish his award in writing of and concerning the matters referred, ready to be delivered to the parties in difference, or such of them as require the same (or

their respective personal representatives, if either of the said parties die before the making of the award) on or before the next, or on or before such further day as the arbitrator may from time to time appoint and signify in writing signed by him and indorsed on this order.

4. The said parties shall in all things abide by and obey the award so to be made.

5. The costs of the said cause and the costs of the reference and award shall be

6. The arbitrator may (if he think fit) examine the said parties to this action, and their respective witnesses, upon oath or affirmation.

7. The said parties shall produce before the arbitrator all books, deeds, papers, and writings in their or either of their custody or power relating to the matters in difference.

8. Neither the plaintiff nor the defendant shall bring or prosecute any action against the arbitrator of or concerning the matters so to be referred.

9. If either party by affected delay or otherwise wilfully prevent the said arbitrator from making an award, he or they shall pay such costs to the other as may think reasonable and just.

10. In the event of either of the said parties disputing the validity of the said award, or moving the to set it aside, the said shall have power to remit the matters hereby referred or any or either of them to the reconsideration of the arbitrator.

11. In the event of the arbitrator declining to act or dying before he has made his award, the said parties may, or if they cannot agree, one of the Masters of the Supreme Court of Judicature may, on application by either side, appoint a new arbitrator.

12. Unless restrained by any order of the High Court of Justice, or of any Judge thereof, the party or parties in whose favour the award shall be made shall be at liberty within days after service of a copy of the award on the solicitor or agent of the other party to sign final judgment in accordance with the award, and for all costs that he or they may be entitled to under this order, and under the award, together with the costs of the said judgment.

Dated the day of 18 .

23. *Order for Examination of witnesses before Arbitrator.*

R.S.C. April, 1880.

In the High Court of Justice.

Division. 18 . No.

Master in Chambers.

Between

Plaintiff,

and

Defendant.

Upon hearing
and upon reading the affidavit of
filed the day of 18 , and
It is ordered that attend
before the arbitrator
herein on the
days of 18 , at and
then and there submit to be examined on oath or affirmation on
behalf of the touching the
matters referred to the said arbitrator.

Dated the day of 18 .

---

24. *Order for Examination of Witnesses and Production of Documents.*

R.S.C. April, 1880.

In the High Court of Justice.

Division. 18 . No.

Master in Chambers.

Between Plaintiff,

and

Defendant.

Upon hearing
and upon reading the affidavit of
filed day of 18 , and
It is ordered that
attend before
the arbitrator herein on
the days of , 18 , at
, and then and there submit to be examined on
oath or affirmation on behalf of the
touching the matters referred to the said arbitrator.

And it is further ordered that the said
do at the time and place aforesaid produce and deliver to the said arbitrator the papers, documents, and writings hereinafter mentioned, that is to say,*

Dated the day of , 18.

* Specify documents to be produced.

---

25. *Order Charging Stock—Nisi.*

R.S.C. April, 1880. In the High Court of Justice.

Division. 18 . No.

Master in Chambers.

Between Plaintiff,

and

Defendant.

Upon hearing
and upon reading the affidavit of
filed the day of , 18 , whereby it appears

It is ordered that unless sufficient cause be shown to the contrary before on day the day of , 18 , at o'clock in the forenoon, the defendant's interest in the
so standing as aforesaid shall, and that it in the meantime do, stand charged with the payment of the above-mentioned amount due on the said judgment.

Dated the day of , 18 .

---

26. *Order Charging Stock—Absolute.*

R.S.C. April, 1880. In the High Court of Justice.

Division. 18 . No.

Judge in Chambers.

Between Plaintiff,

and

Defendant.

Upon hearing
and upon reading the affidavit of
filed the day of 18 ,
and an order nisi made herein on the day of 18 ,
reciting the affidavit of
whereby it appeared

It is ordered that the defendant's interest in the
so standing as aforesaid stand charged with the payment of the above-mentioned amount due on the said judgment.

Dated the day of , 18 .

---

27. *Charging Order. Solicitor's Costs.*

R.S.C. April, 1880. In the High Court of Justice.

Division. No.

Judge in Chambers.

Between Plaintiff,

and

Defendant.

Upon hearing
and upon reading the affidavit of
filed the day of , 18 , and
It is ordered that the said
the solicitor for the
in this action shall have a charge upon
for his costs, charges, and expenses of and in reference to this action.
Dated the day of , 18 .

---

28. *Order to Remove Judgment from County Court.*

R.S.C. April, 1880.

In the High Court of Justice.
Division. 18 . No. .
Master in Chambers.
In the matter of a plaint in the County Court of
holden at
wherein
Plaintiff,
and
Defendant.

Upon reading the affidavit of
filed the day of 18 , and
the certified copy of the judgment in the plaint above mentioned,
It is ordered that a writ of certiorari issue to remove the said judgment from the above-named County Court into the Division of the High Court of Justice.
Dated the day of 18 .

---

29. *Order for Arrest (capias) under Debtors' Act.*

R.S.C. April, 1880.

In the High Court of Justice.
Division. 18 . No.
Judge in Chambers.
Between
Plaintiff,
and
Defendant.

Upon hearing
and upon reading the affidavit of
filed the day of 18 , and
It is ordered that the defendant be arrested and imprisoned for the term of from the date of his arrest, including the day of such date, unless and until he shall sooner deposit in Court the sum of *l.*, or give to the plaintiff a bond executed by him and two sufficient sureties in the penalty of

l., or some other security satisfactory to the plaintiff, that

And it is further ordered that the sheriff of do within one calendar month from the date hereof, including the day of such date, and not afterwards, take the defendant for the purpose aforesaid, if he shall be found in the said sheriff's bailiwick.

Dated the day of , 18 .

---

30. *Commission to Examine Witnesses.*

R.S.C. April, 1880. In the High Court of Justice.

Division. 18 . No.

Master in Chambers.

Between

Plaintiff,

and

Defendant.

Upon hearing
and upon reading the affidavit of
filed the day of 18 , and
It is ordered as follows:—

1. A commission may issue directed to
of and
commissioners named by and on behalf of
the and to
of and
of commissioners named by and on behalf of
the for the examination upon interrogatories and *viva voce* of witnesses on behalf of the said
and respectively at
aforesaid before the said commissioners, or any two of them, so that one commissioner only on each side be present and act at the examination.

2. Both the said
and
shall be at liberty to examine upon interrogatories and *viva voce* upon the subject-matter thereof or arising out of the answers thereto such witnesses as may be produced on their behalf, with liberty to the other party to cross-examine the said witnesses upon cross interrogatories and *viva voce* on the subject-matters thereof or arising out of the answers thereto, the party producing the witness for examination being at liberty to re-examine him *viva voce;* and all such additional *viva voce* questions, whether on examination, cross-examination, or re-examination, shall be re-

duced into writing, and, with the answers thereto, returned with the said commission.

3. Within days from the date of this order, the solicitors or agents of the said and shall exchange the interrogatories they propose to administer to their respective witnesses, and shall also within days from the exchange of such interrogatories, exchange copies of the cross-interrogatories intended to be administered to the said witnesses.

4. days previously to the sending out of the said commission, the solicitor of the said shall give to the solicitor of the said notice in writing of the mail or other conveyance by which the commission is to be sent out.

5. days previously to the examination of any witness on behalf of the said or respectively, notice in writing signed by any one of the commissioners of the party on whose behalf the witness is to be examined and stating the time and place of the intended examination, and the names of the witnesses intended to be examined, shall be given to the commissioners of the other party by delivering the notice to them personally, or by leaving it at their usual place of abode or business, and if the commissioners of that party neglect to attend pursuant to the notice, then one of the commissioners of the party on whose behalf the notice is given shall be at liberty to proceed with and take the examination of the witness or witnesses *ex parte*, and adjourn any meeting or meetings, or continue the same, from day to day until all the witnesses intended to be examined by virtue of the notice have been examined, without giving any further or other notice of the subsequent meeting or meetings.

6. In the event of any witness on his examination, cross-examination, or re-examination producing any book, document, letter, paper, or writing, and refusing for good cause to be stated in his deposition, to part with the original thereof, then a copy thereof, or extract therefrom, certified by the commissioners or commissioner present to be a true and correct copy or extract, shall be annexed to the witnesses' deposition.

7. Each witness to be examined under the commission shall be examined on oath, affirmation, or otherwise in accordance with his religion by or before the said commissioners or commissioner.

8. If any one or more of the witnesses do not understand the English language (the interrogatories, cross-interrogatories, and *viva voce* questions, if any, being previously translated into the language with which he or they is or are conversant), then the examination shall be taken in English through the medium of an interpreter or interpreters, to be nominated by the commissioners or commissioner, and to be previously sworn according to his or their several religions by or before the said commissioners or com-

missioner truly to interpret the questions to be put to the witness or witnesses, and his and their answers thereto.

9. The depositions to be taken under and by virtue of the said commission shall be subscribed by the witness or witnesses, and by the commissioners or commissioner who shall have taken such depositions.

10. The interrogatories, cross-interrogatories, and depositions, together with any documents referred to therein, or certified copies thereof or extracts therefrom shall be sent to the Senior Master of the Supreme Court of Judicature on or before the day of , or such further or other day as may be ordered, enclosed in a cover under the seal or seals of the said commissioners or commissioner, and office copies thereof may be given in evidence on the trial of this action by and on behalf of the said and respectively, saving all just exceptions without any other proof of the absence from this country of the witness or witnesses therein named, than an affidavit of the solicitor or agent of the said or respectively, as to his belief of the

11. The trial of this cause is to be stayed until the return of the said commission.

12. The costs of this order, and of the commission to be issued in pursuance hereof, and of the interrogatories, cross-interrogatories and depositions to be taken thereunder, together with any such document, copy, or extract as aforesaid, and official copi s thereof, and all other costs incidental thereto, shall be

Dated the day of 18 .

---

31. *Order of Reference under Sec.* 56 *of the Judicature Act*, 1873.

R.S.C. April, 1880.

In the High Court of Justice.

Division. 18 . No.

Master in Chambers.

Between

Plaintiff,

and

Defendant.

Upon hearing

and upon reading the affidavit of

filed the day of 18 , and

It is ordered that the following question arising in this action, namely,

be referred for inquiry and report to
under section 56 of the Judicature Act, 1873, and that the costs of this application be

Dated the day of 18 .

---

32. *Order of Reference under Sec.* 57 *of the Judicature Act,* 1873.

R.S.C. April, 1880.

In the High Court of Justice.

Division. 18 . No.

Master in Chambers.

Between Plaintiff,

and

Defendant.

Upon hearing
and upon reading the affidavit of
filed the day of 18 , and

It is ordered that the [*state whether all or some, and if so, which, of the questions are to be tried*] in this action be tried by , who shall have all the powers as to certifying and amending of a Judge of the High Court of Justice, and shall make his report of and concerning the matters ordered to be tried as aforesaid pursuant to the statute.

And it is further ordered that the said referee may, if he think fit, examine the parties to this action, and their respective witnesses, upon oath or affirmation, and that the said parties shall produce before the said referee all books, deeds, papers, and writings in their or either of their custody or power relating to the matters so ordered to be tried.

And it is further ordered that neither the plaintiff nor the defendant shall bring or prosecute any action against the said referee, or against each other, of or concerning the matters so ordered to be tried, and that if either party by affected delay or otherwise wilfully prevent the said referee from making his report, he or they shall pay such costs to the other as the High Court, or any Judge thereof, may think reasonable and just.

And it is further ordered, that in the event of the said referee declining to act, or dying before he has made his report, the said parties may, or if they cannot agree, one of the Judges of the High Court may, upon application by either party, appoint a new referee.

And it is ordered that the costs of this application be

Dated the day of 18 .

---

33. *Order of Reference to Master.*

R.S.C. April, 1880. In the High Court of Justice.

Division. 18 . No.

Master in Chambers.

Between Plaintiff,

and

Defendant.

Upon hearing
and upon reading the affidavit of
filed the day of , 18 , and

It is ordered that this action [*or* the matters of account in this action, *or* the following questions in this action being matters of account, namely, *stating them*] be referred to the certificate of one of the Masters of the Supreme Court of Judicature, with all the powers as to certifying and amending of a Judge of the High Court of Justice, and that the costs of the
and of the reference be in the discretion of the Master and that the costs of this application be

Dated the day of , 18 .

---

34. *Order for Examination of Witnesses before Trial.*

R.S.C. April, 1880. In the High Court of Justice.

Division. 18 . No.

Master in Chambers.

Between Plaintiff,

and

Defendant.

Upon hearing
and upon reading the affidavit of
filed the day of 18 , and

It is ordered that a witness on behalf of the be examined *vivâ voce* (on oath or affirmation) before one of the Masters of the Supreme Court of Judicature [*or* before , esquire, special examiner], the solicitor or agent giving to the solicitor or agent notice in writing of the time and place where the examination is to take place.

And it is further ordered that the examination so taken be filed in the Central Office of the Supreme Court of Judicature, and that an office copy or copies thereof may be read and given in evidence on the trial of this cause, saving all just exceptions, without any further proof of the absence of the said witness than the affidavit of the solicitor or agent of the as to his belief, and that the costs of this application be

Dated the day of 18 .

35. *Order for Issue of Commission to Examine Witnesses.*

R.S.C. April, 1880.

In the High Court of Justice.

Division. 18 . No.

Master in Chambers.

Between Plaintiff,

and

Defendant.

Upon hearing

and upon reading the affidavit of

filed the day of , 18 , and

It is ordered that the be at liberty to issue a commission for the examination of witnesses on behalf at

And it is further ordered that the trial of this action be stayed until the return of the said commission, the usual long order to be drawn up, and unless agreed upon by the parties within one week, to be settled by a Master, and that the cost of this application be

Dated the day of 18 .

---

36. *Order for Examination of Judgment Debtor.*

R.S.C. April, 1880.

In the High Court of Justice.

Division. 18 .No.

Master in Chambers.

Between Judgment Creditor,

and

Judgment Debtor.

Upon hearing

and upon reading the affidavit of

filed the day of 18 , and

It is ordered that the above-named judgment debtor attend and be orally examined as to whether any and what debts are owing to him, before the Master in Chambers, at such time and place as he may appoint, and that the said judgment debtor produce his [books*] before the said Master at the time of the examination, and that the costs of this application be

* Or as may be ordered.

Dated the day of , 18 .

---

37. *Garnishee Order (Attaching Debt).*

R.S.C. April, 1880.

In the High Court of Justice.

Division. 18 . No.

Master in Chambers.

Between

Judgment Creditor,

and

Judgment Debtor,

Garnishee.

Upon hearing and upon reading the affidavit of filed the day of 18 , and

It is ordered that all debts owing or accruing due from the above-named garnishee to the above-named judgment debtor be attached to answer a judgment recovered against the said judgment debtor by the above-named judgment creditor in the High Court of Justice on the day of , 18 , for the sum of *l.*, on which judgment the said sum of *l.* remains due and unpaid.

And it is further ordered that the said garnishee attend the Master in Chambers on day the day of , 18 , at o'clock in the noon, on an application by the said judgment creditor, that the said garnishee pay the debt due from him to the said judgment debtor, or so much thereof as may be sufficient to satisfy the judgment.

And that the costs of this application be

Dated the day of 18 .

---

38. *Garnishee Order (Absolute).*

R.S.C. April, 1880.

In the High Court of Justice.

Division. 18 . No.

Master in Chambers.

Between

Judgment Creditor,

and

Judgment Debtor,

Garnishee.

Upon hearing and upon reading the affidavit of filed the day of 18 , and whereby it was ordered that all debts owing or accruing due from the above-named garnishee to the above-named judgment debtor should be attached to answer a judgment recovered against the said judgment debtor by the above-named judgment creditor in the High Court of Justice on the day of 18 , for the sum of *l.*, on which judgment the said sum of *l.* remained due and unpaid,

It is ordered that the said garnishee do forthwith pay the said judgment creditor the debt due from him to the said judgment debtor (or so much thereof as may be sufficient to satisfy the judgment debt), and that in default thereof execution may issue for the same, and that the costs of this application be

Dated the day of 18 .

39. *Order on Client's Application to tax Solicitor's Bill of Costs.*

R.S.C. April, 1880.

In the High Court of Justice.
Division 18 . No.
Master in Chambers.

In the matter of

Gentleman,
One of the Solicitors of the Supreme Court.

Upon the application of
[hereinafter called "the applicant"]
It is ordered that the bill of fees, charges, and disbursements delivered to the applicant by the above-named solicitor be referred to the Master to be taxed, and that the said solicitor give credit for all sums of money by him received of or on account of the applicant, and that he refund what, if anything, he may on such taxation appear to have been overpaid.

And it is further ordered that if the said solicitor attends on the taxation, the Master tax the costs of the reference, and certify what shall be found due to or from either party in respect of the bill and demand and of the costs of the reference, to be charged (if payable) according to the event of the taxation, pursuant to the statute.

And it is further ordered that the said solicitor do not commence or prosecute any action or suit touching the demand pending the reference.

And it is further ordered that upon payment by the applicant of what (if anything) may appear to be due to the said solicitor, the said solicitor do (if required) deliver up to the applicant, or as he may direct, all deeds, books, papers, and writings in the said solicitor's possession, custody, or power, belonging to the applicant.

And it is ordered that the costs of this application be

Dated the day of 18 .

---

40. *Order on Solicitor's Application to tax Bill of Costs.*

R.S.C. April, 1880.

In the High Court of Justice.
Division. 18 . No.
Master in Chambers.

In the matter of gentleman
one of the solicitors of the Supreme Court.

Upon hearing
and upon reading the affidavit of
filed the day of 18 , and

It is ordered that the above-named solicitor's bill of fees, charges, and disbursements, delivered to (hereinafter

called the said client) be referred to the Master to be taxed, and that the said solicitor give credit for all sums of money by him received from or on account of the said client, and that he refund what, if anything, he may on such taxation appear to have been overpaid.

And it is further ordered that the Master tax the costs of the reference and certify what shall be found due to or from either party in respect of the bill and demand and of the costs of the reference, to be paid according to the event of the taxation pursuant to the statute.

And it is further ordered that the said solicitor do not commence or prosecute any action or suit touching the demand pending the reference.

And it is further ordered that upon payment by the said client of what (if anything) may appear to be due to the said solicitor, the said solicitor do (if required) deliver to the said client or as he may direct, all deeds, books, papers, and writings in the said solicitor's possession, custody, or power, belonging to the said client.

And it is ordered that the costs of this application be

Dated the day of 18 .

---

41. *Order to tax after Action brought.*

R.S.C. April, 1880.

In the High Court of Justice.

Division. 18 . No.

Master in Chambers.

Between

Plaintiff,

and

Defendant.

Upon hearing
and upon reading the affidavit of
filed the day of 18 , and

It is ordered that the plaintiff's bill of costs, charges, and disbursements delivered to the defendant, for the recovery of which this action is brought, be referred to the Master to be taxed, and that the plaintiff give credit at the time of taxation for all sums of money by him received from or on account of the defendant.

And it is further ordered that the Master tax the costs of the reference, and certify what upon such reference shall be found due to or from either party in respect of the bill and demand, and of the costs of the reference, pursuant to the statute.

And it is further ordered that the plaintiff do not prosecute this action touching the demand pending the reference.

And it is further ordered that upon payment of what (if anything) may appear to be due to the plaintiff, together with the costs of this action (which are to be also taxed and paid), all further proceedings therein be stayed, and that the costs of this application be

Dated the day of 18 .

---

42. *Order to try Action in County Court.*

R.S.C. April, 1880.

In the High Court of Justice.

Division. 18 . No.

Master in Chambers.

Between

Plaintiff,

and

Defendant.

Upon hearing

,

and upon reading the affidavit of
filed the day of 18, and

It is ordered that this action be tried before the County Court of holden at , and that the costs of this application be

Dated the day of 18 .

---

43. *Order to give Security or try Action in County Court.*

R.S.C. April, 1880.

In the High Court of Justice.

Division. 18 . No.

Master in Chambers.

Between

Plaintiff,

and

Defendant.

Upon hearing
and upon reading the affidavit of
filed the day of , 18 , and

It is ordered that unless the plaintiff within give full security for the defendant's costs to the satisfaction of one of the Masters of the Supreme Court of Judicature, this cause be remitted for trial before the County Court of holden at
and that the costs of this application be

Dated the day of , 18 .

44. *Order for Examination touching Means.*

R.S.C. April, 1880. In the High Court of Justice.

Division.

Judge in Chambers.

Between

Judgment Creditor,

and

Judgment Debtor.

Upon hearing , and upon reading the affidavit of filed the day of 18 , and

It is ordered that the above-named do attend before the Judge in Chambers on the day of next, at in the noon, to be examined upon oath touching his means of paying the judgment debt, and that the costs of this application be

Dated the day of 18 .

---

45. *Order for Payment of Judgment Debt by Instalments.*

R.S.C. April, 1880. In the High Court of Justice.

Division.

Judge in Chambers.

Between

Judgment Creditor,

and

Judgment Debtor.

Upon hearing and upon reading the affidavit of filed the day of 18 , and

It is ordered that the above-named judgment debtor do pay to the above-named judgment creditor the sum of *l.*, together with interest thereon at the rate of 4*l.* per centum per annum from the day of 18 , the date of the judgment, and also *l.*, the costs of this application in manner following; namely [*here describe the mode in which the payment is to be made*].

Dated the day of 18 .

---

46. *Order for Committal of Judgment Debtor.*

R.S.C. April, 1880. In the High Court of Justice.

Division.

Judge in Chambers.

Between

Judgment Creditor.

and

Judgment Debtor.

Upon hearing

and upon reading the affidavit of
filed the day of , 18 , and

It is ordered that the above-named judgment debtor be, for default in payment of the debt hereinafter mentioned, committed to prison for the term of from the date of his arrest, including the day of such date, or until he shall pay *l.*, being the amount due from him in pursuance of a judgment [*or* order] of the High Court of Justice, bearing date the day of , 18 , together with interest thereon at 4*l.* per cent. per annum from the aforesaid date, and 1*l.* 6*s.* 8*d.* for costs of this order, and sheriff's fees for the execution thereof.

And it is further ordered that the sheriff take the said debtor for the purpose aforesaid if he is found within his bailiwick.

And it is ordered that the costs of this application be

Dated day of 18 .

---

47. *Order for Committal of Judgment Debtor on Nonpayment of Instalment.*

In the High Court of Justice. R.S.C. April, 1880.
Division.
Judge in Chambers.

Between

Judgment Creditor.

and

Judgment Debtor.

Upon the hearing

and upon reading the affidavit of ,
filed the day of 18 , and

It is ordered that the above-named judgment debtor be for default in payment of *l.*, being the amount of the [*first*] instalment of the judgment debt of *l.* in this action directed to be paid pursuant to the order of bearing date the day of 18 , committed to prison for the term of from the date of his arrest, including the day of such date, or until he shall pay the said instalment together with 13*s.* 4*d.* the costs of this order, and sheriff's fees for the execution thereof. And it is further ordered that the sheriff of take the said debtor for the purpose aforesaid if he is found in his bailiwick.

And it is ordered that the costs of this application be

Dated the day of 18 .

48. *Interpleader Order, No.* 1.

R.S.C. April, 1880.

In the High Court of Justice.

Division. 18 . No.

Master in Chambers.

Between

Plaintiff,

and

Defendant,

and between

Claimant,

and

Respondent.

Upon hearing

and upon reading the affidavit of

filed the day of 18 , and

Claimant barred.

It is ordered that the claimant be barred, that no action be brought against the above-named [sheriff] , and that the costs of this application be

Dated the day of 18 .

---

49. *Interpleader Order, No.* 2.

R.S.C. April, 1880.

In the High Court of Justice.

Division. 18 . No.

Master in Chambers.

Between

Plaintiff,

and

Defendant,

and

Claimant.

Upon hearing , and upon reading the affidavit of filed the day of 18 , and

Claimant made defendant.

It is ordered that the above-named claimant be substituted as defendant in this action in lieu of the present defendant, and that the costs of this application be

Dated the day of 18 .

---

50. *Interpleader Order, No.* 3.

R.S.C. April, 1880.

In the High Court of Justice.

Division. 18 . No.

Master in Chambers.

Between

Plaintiff,

and

Defendant.

and between

Claimant,

and the said execution creditor, and

the sheriff of Respondents.

Upon hearing , and upon reading the affidavit of filed the day of 18 , and

Sheriff to sell.

It is ordered that the said sheriff proceed to sell the goods seized by him under the writ of fieri facias issued herein, and pay the net proceeds of the sale, after deducting the expenses thereof, into Court in this cause, to abide further order herein.

Claimant made plaintiff.

And it is further ordered that the parties proceed to the trial of an issue in the High Court of Justice, in which the said claimant shall be the plaintiff and the said execution creditor shall be the defendant, and that the question to be tried shall be whether at the time of the seizure by the sheriff the goods seized were the property of the claimant as against the execution creditor.

And it is further ordered that this issue be prepared and delivered by the plaintiff therein within from this date, and be returned by the defendant therein within days, and be tried at

And it is further ordered that the question of costs and all further questions be reserved until after the trial of the said issue, and that no action shall be brought against the said sheriff for the seizure of the said goods.

Dated the day of 18 .

---

51. *Interpleader Order, No.* 4.

R.S.C. April, 1880.

In the High Court of Justice.

Division. 18 No.

Master in Chambers.

Between

Plaintiff,

and

Defendant,

and between

Claimant,

and the said execution creditor, and the sheriff of Respondents.

Upon hearing , and upon reading the affidavit of filed the day of 18 , and

Claimant to give security or pay into Court,

It is ordered that upon payment of the sum of *l.* into Court by the said claimant within from this date, or upon his giving within the same time security to the satisfaction of one of the Masters of the Supreme Court for the payment of the same amount by the said claimant according to the directions of any order to be made herein, and upon payment to the above-named sheriff of the possession money from this date, the said sheriff do withdraw from the possession of the goods seized by him under the writ of fieri facias herein.

in default, sheriff to sell.

And it is further ordered that unless such payment be made or security given within the time aforesaid the said sheriff proceed to sell the said goods, and pay the proceeds of the sale, after deducting the expenses thereof and the possession money from this date, into Court in the cause, to abide further order herein.

Claimant made plaintiff.

And it is further ordered that the parties proceed to the trial of an issue in the High Court of Justice, in which the claimant shall be plaintiff and the execution creditor shall be defendant, and that the question to be tried shall be whether at the time of the seizure by the sheriff the goods seized were the property of the claimant as against the execution creditor.

And it is further ordered that this issue be prepared and delivered by the plaintiff therein within from this date, and be returned by the defendant therein within days, and be tried at

And it is further ordered that the question of costs and all further questions be reserved until after the trial of the said issue, and that no action shall be brought against the sheriff for the seizure of the said goods.

Dated the day of 18 .

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52. *Interpleader Order, No. 5.*

R.S.C. April, 1880.

In the High Court of Justice.

Division. 18 . No.

Master in Chambers.

Between Plaintiff,

and

Defendant.

and between

Claimant,

and the said execution creditor, and
the sheriff of Respondents.

Upon hearing ,
and upon reading the affidavit of
filed the day of , 18 , and

It is ordered that upon payment of the sum of *l.* into Court by the said claimant, or upon his giving security to the satisfaction of one of the Masters of the Supreme Court for the payment of the same amount by the claimant according to the directions of any order to be made herein, the above-named sheriff withdraw from the possession of the goods seized by him under the writ of fieri facias issued herein. Claimant to give security or pay into Court.

And it is further ordered that in the meantime, and until such payment made or security given, the sheriff continue in possession of the goods, and the claimant pay possession money for the time he so continues, unless the claimant desire the goods to be sold by the sheriff, in which case the sheriff is to sell them and pay the proceeds of the sale, after deducting the expenses thereof and the possession money from this date, into Court in the cause, to abide further order herein. Sheriff to continue in possession meantime.

And it is further ordered that the parties proceed to the trial of an issue in the High Court of Justice, in which the claimant shall be plaintiff and the execution creditor shall be defendant, and that the question to be tried shall be whether at the time of the seizure by the sheriff the goods seized were the property of the claimant as against the execution creditor. Claimant made plaintiff.

And it is further ordered that this issue be prepared and delivered by the plaintiff therein within from this date, and be returned by the defendant therein within days, and be tried at

And it is further ordered that the question of costs and all further questions be reserved until after the trial of the said issue, and that no action shall be brought against the sheriff for the seizure of the said goods.

Dated the day of , 18 .

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53. *Interpleader Order, No.* 6.

In the High Court of Justice. R.S.C. April, 1880.

Division. 18 . No.

Master in Chambers.

Between Plaintiff,

and

Defendant,

and between

Claimant,

and the said execution creditor and
the sheriff of Respondents.

Summary order by consent.

The claimant and the execution creditor having requested and consented that the merits of the claim made by the claimant be disposed of and determined in a summary manner, now upon hearing , and upon reading the affidavit of filed the day of 18 , and

It is ordered that

And that the costs of this application be

Dated day of , 18 .

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54. *Interpleader Order, No. 7.*

R.S.C. April, 1880.

In the High Court of Justice.

Division. 18 . No.

Master in Chambers.

Between

Plaintiff,

and

Defendant,

and between

Claimant,

and the said execution creditor and
the sheriff of Respondents.

Upon hearing
and upon reading the affidavit of
filed the day of 18 , and

Sheriff to sell—goods sufficient.

It is ordered that the above-named sheriff proceed to sell enough of the goods seized under the writ of fieri facias issued in this action to satisfy the expenses of the said sale, the rent (if any) due, the claim of the claimant, and this execution.

And it is further ordered that out of the proceeds of the said sale (after deducting the expenses thereof, and rent, if any), the said sheriff pay to the claimant the amount of his said claim, and to the execution creditor the amount of his execution, and the residue, if any, to the defendant.

And it is further ordered that no action be brought against the said sheriff, and that the costs of this application be

Dated the day of 18 .

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55. *Order dismissing Summons (generally).*

R.S.C. April, 1880.

In the High Court of Justice.

Division. 18 . No.

Master in Chambers.

Between

Plaintiff,

and

Defendant.

Upon hearing ,
and upon reading the affidavit of
filed the day of 18 , and

It is ordered that the application of
be dismissed* with costs to be taxed and paid by the
to the

Dated the day of 18 .

* If the dismissal is with costs, add these words.

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56. *Summons for Entry of Satisfaction on a Registered Bill of Sale.*

R.S.C. April, 1880.

In the High Court of Justice.

In the matter of a bill of sale by
to
dated the day of 18 , and registered on the
day of 18 .

Let all parties concerned attend the Registrar of Bills of Sale at the Central Office, Royal Courts of Justice, London, on the day of 18 , at o'clock in the noon, on the hearing of an application on the part of that satisfaction be entered on the above-mentioned bill of sale.

Dated the day of 18 .

This summons was taken out by
of
To

SECOND SCHEDULE.

Session and Chapter.	Title.	Extent of Repeal.
	An Act to provide for the augmenting the salaries of the Master of the Rolls and the Vice Chancellor of England, the Chief Baron of the Court of Exchequer, and the Puisne Judges and	Section seven.

Session and Chapter.	Title.	Extent of Repeal.
	Barons of the Courts in Westminster Hall, and to enable His Majesty to grant an annuity to such Vice Chancellor, and additional annuities to such Master of the Rolls, Chief Baron, and Puisne Judges and Barons on their resignation of their respective offices.	
	The Bankruptcy Act, 1869.	Section one hundred and sixteen from "provided that at any time," inclusive, to end of the section.
	The Bankruptcy Repeal and Insolvent Court Act, 1869	Section nineteen from "provided that at any time," inclusive, to end of the section.
	Supreme Court of Judicature Act, 1873 . .	So much of sections three and sixteen as relates to the London Court of Bankruptcy, section six, section nine, section ten, so much of section thirteen as relates to additional judges of the Court of Appeal, section thirty-four from "all matters pending in the London Court of Bankruptcy," to "London Court of Bankruptcy," section thirty-five, section forty-eight, section fifty-three, section sixty-three, section sixty-eight, section sixty-nine, section seventy, section seventy-one, section seventy-two, section seventy-three, section seventy-four, and the whole of the schedule.

RULES OF THE SUPREME COURT (COSTS).

Additional Rules of Court under the Supreme Court of Judicature Act, 1875.

(Order in Council, 12th Aug. 1875.)

Order I.

Where any written deposition of a witness has been filed for use on a trial, such deposition shall be printed, unless otherwise ordered. Printing written depositions filed.

Order II.

The Rules of Court as to printing depositions and affidavits to be used on a trial shall not apply to depositions and affidavits which have previously been used upon any proceeding without having been printed. Depositions and affidavits.

Order III.

Other affidavits than those required to be printed by Order XXXVIII., Rule 6, in the schedule to the Supreme Court of Judicature Act, 1875, may be printed if all the parties interested consent thereto, or the Court or Judge so order. Depositions and affidavits, by consent.

Order IV*a*.

Order IV. of the additional Rules of the Supreme Court (Costs) is hereby annulled. Special case. R.S.C. April, 1880.

Order V.

Where, pursuant to Rules of Court, any pleading, special case, petition of right, deposition, or affidavit is to be printed, and where any printed or other office copy thereof is to be taken, the following regulations shall be observed:

1. The party on whose behalf the deposition or affidavit is taken and filed is to print the same Party to print.

in the manner provided by Rule 2 of Order LVI. in the first schedule to the Supreme Court of Judicature Act, 1875.

Copy to be furnished.

2. To enable the party printing, to print any deposition, the officer with whom it is filed shall on demand deliver to such party a copy written on draft paper on one side only.

Cost.

3. The party printing shall, on demand in writing, furnish to any other party or his solicitor any number of printed copies, not exceeding ten, upon payment therefor at the rate of 1*d.* per folio for one copy, and ½*d.* per folio for every other copy.

Credit.

4. The solicitor of the party printing shall give credit for the whole amount payable by any other party for printed copies.

Written copy.

5. The party entitled to be furnished with a print shall not be allowed any charge in respect of a written copy, unless the Court or Judge shall otherwise direct.

Office copy.

6. The party by or on whose behalf any deposition, affidavit, or certificate is filed shall leave a copy with the officer with whom the same is filed, who shall examine it with the original and mark it as an office copy; such copy shall be a copy printed as above provided where such deposition or affidavit is to be printed.

Production.

7. The party or solicitor who has taken any printed or written office copy of any deposition or affidavit is to produce the same upon every proceeding to which the same relates.

Furnishing copies.

8. Where any party is entitled to a copy of any deposition, affidavit, proceeding, or document filed or prepared by or on behalf of another party, which is not required to be printed, such copy shall be furnished by the party by or on whose behalf the same has been filed or prepared.

How obtained.

9. The party requiring any such copy, or his solicitor, is to make a written application to the party by whom the copy is to be furnished, or his solicitor, with an undertaking to pay the proper charges, and thereupon such copy is to be made and ready to be delivered at the expiration of twenty-four hours after the receipt of such request and undertaking, or within such other time as the Court or Judge

may in any case direct, and is to be furnished accordingly upon demand and payment of the proper charges.

Ne exeat regno.

10. In the case of an *ex parte* application for an injunction or writ of *ne exeat regno*, the party making such application is to furnish copies of the affidavits upon which it is granted upon payment of the proper charges immediately upon the receipt of such written request and undertaking as aforesaid, or within such time as may be specified in such request, or may have been directed by the Court.

Affidavit to state on whose behalf filed.

11. It shall be stated in a note at the foot of every affidavit filed on whose behalf it is so filed, and such note shall be printed on every printed copy of an affidavit or set of affidavits, and copied on every office copy and copy furnished to a party.

Name and address.

12. The name and address of the party or solicitor by whom any copy is furnished is to be endorsed thereon in like manner as upon proceedings in Court, and such party or solicitor is to be answerable for the same being a true copy of the original, or of an office copy of the original, of which it purports to be a copy, as the case may be.

Numbering.

13. The folios of all printed and written office copies, and copies delivered or furnished to a party, shall be numbered consecutively in the margin thereof, and such written copies shall be written in a neat and legible manner on the same paper as in the case of printed copies.

Refusal to furnish.

14. In case any party or solicitor who shall be required to furnish any such written copy as aforesaid shall either refuse or, for twenty-four hours from the time when the application for such copy has been made, neglect to furnish the same, the person by whom such application shall be made shall be at liberty to procure an office copy from the office in which the original shall have been filed, and in such case no costs shall be due or payable to the solicitor so making default in respect of the copy or copies so applied for.

Costs of printing.

15. Where, by any order of the Court (whether of appeal or otherwise) or a Judge, any pleading, evidence, or other document is ordered to be

printed, the Court or Judge may order the expense of printing to be borne and allowed, and printed copies to be furnished by and to such parties and upon such terms as shall be thought fit.

Order VI.

The following regulations as to costs of proceedings in the Supreme Court of Judicature shall regulate such costs from the commencement of the Supreme Court of Judicature Acts, 1873 and 1875:

Lower scale. 1. Solicitors shall be entitled to charge and be allowed the fees set forth in the column headed "lower scale" in the schedule hereto—

In all actions for purposes to which any of the forms of indorsement of claim on writs of summons in Sections II., IV., and VII., in Part II. of Appendix A., referred to the 3rd Rule of Order III. in the schedule to the Supreme Court of Judicature Act, 1875, or other similar forms, are applicable (except as after provided in actions for injunctions);

In all causes and matters by the 34th section of the Supreme Court of Judicature Act, 1873, assigned to the Queen's Bench Division of the Court;

In all causes and matters by the 34th section of the said Act assigned to the Common Pleas Division of the Court;

In all causes and matters by the 34th section of the said Act assigned to the Exchequer Division of the Court;

In all causes and matters by the 34th section of the said Act assigned to the Probate, Divorce, and Admiralty Division of the Court;

And also in causes and matters by the 34th section of the said Act assigned to the Chancery Division of the Court in the following cases; (that is to say,)

(1.) By creditors, legatees (whether specific, pecuniary, or residuary), devisees (whether in trust or otherwise), heirs-at-law or next-of-kin, in which the personal or real or personal and real estate for or against or in respect of which or for an account or administration of which the demand may be made shall be under the amount or value of 1,000*l.*

(2.) For the execution of trusts or appointment of new trustees in which the trust estate or fund shall be under the amount or value of 1,000*l.*

(3.) For dissolution of partnership or the taking of partnership or any other accounts in which the partnership assets or the estate or fund shall be under the amount or value of 1,000*l.*

(4.) For foreclosure or redemption, or for enforcing any charge or lien in which the mortgage whereon the suit is founded, or the charge or lien sought to be enforced, shall be under the amount or value of 1,000*l.*

(5.) And for specific performance in which the purchase money or consideration shall be under the amount or value of 1,000*l.*

(6.) In all proceedings under the Trustees Relief Acts, or under the Trustee Acts, or under any of such Acts, in which the trust estate or fund to which the proceeding relates shall be under the amount or value of 1,000*l.*

(7.) In all proceedings relating to the guardianship or maintenance of infants, in which the property of the infant shall be under the amount or value of 1,000*l.*

(8.) In all proceedings by original special case, and in all proceedings relating to funds carried to separate accounts, and in all proceedings under any Railway or private Act of Parliament, or under any other statutory or summary jurisdiction, and generally in all other cases where the estate or fund to be dealt with shall be under the amount or value of 1,000*l.*

Where a plaintiff claimed compensation out of an estate (on the ground that deceased had taken both under a will and in opposition to it) and added a claim for administration, it was held that the amount to which he was entitled, and not the amount of the estate, was the measure of value for the purpose of taxation. (*Rogers* v. *Jones*, 7 Ch. D. 345.) In the administration of real estate subject to a mortgage, the actual and not the estimated value of the equity of redemption is to be taken for taxation. (*Re Sanderson*, 7 Ch. D. 176.)

Higher scale.

2. Solicitors shall be entitled to charge and be allowed the fees set forth in the column headed "higher scale" in the schedule hereto; in all actions for special injunctions to restrain the commission or continuance of waste, nuisances, breaches of covenant, injuries to property, and infringement of rights, easements, patents and copyrights, and other similar cases where the procuring such injunction is the principal relief sought to be obtained, and in all cases

other than those to which the fees in the column headed "lower scale" are hereby made applicable.

Where a trespass did not involve any assertion of title or any injury of a permanent or irreparable nature, it was held that it was not a case where the injunction was the principal relief sought. (*Chapman* v. *Midland Railway Company*, 5, Q. B. D. 167; Affirmed by C. of A., W. N. 1880, p. 69.)

Court may direct.

3. Notwithstanding these rules, the Court or Judge may in any case direct the fees set forth in either of the said two columns to be allowed to all or either or any of the parties, and as to all or any part of the costs.

A Judge cannot delegate to a Master the discretionary power given him by this rule to allow the higher or lower scale. (*Corticene Floor Company* v. *Tull*, 27 W. R. 373.)

In an action on a bill of exchange, Jessel, M. R., certified for costs in the higher scale, when it was one of rather an extraordinary character. (*Pooley* v. *Driver*, 5 Ch. D. 494.)

4. The provisions of Order LXIII. in the first schedule to the Supreme Court of Judicature Act, 1875, shall apply to these rules.

The SCHEDULE above referred to.

An Order or Rule herein referred to by number shall mean the Order or Rule so numbered in the First Schedule to the Supreme Court of Judicature Act, 1875.

Writs, Summonses, and Warrants.

	Lower Scale. £	s.	d.	Higher Scale. £	s.	d.
Writs of summons for the commencement of any action	0	6	8	0	13	4
And for indorsement of claim, if special	0	5	0	0	5	0
Concurrent writ of summons	0	6	8	0	6	8
Renewal of a writ of summons	0	6	8	0	6	8
Notice of a writ for service in lieu of writ out of jurisdiction	0	4	0	0	5	0
Writ of inquiry	1	1	0	1	1	0
Writ of mandamus or injunction	0	10	0	1	1	0
Or per folio	0	1	4	0	1	4
Writ of subpœna ad testificandum duces tecum	0	6	8	0	6	8
And if more than four folios, for each folio beyond four	0	1	4	0	1	4
Writs or writs of subpœna ad testificandum for any number of persons not exceeding three, and the same for every additional number not exceeding three	0	6	8	0	6	8

	Lower Scale. £	s.	d.	Higher Scale. £	s.	d.	
Writ of distringas, pursuant to statute 5 Vict. c. 8	0	13	4	0	13	4	See O.XLVI. R. 2a.
Writ of execution, or other writ to enforce any judgment or order	0	7	0	0	10	0	
And if more than four folios, for each folio beyond four	0	1	4	0	1	4	
Procuring a writ of execution or notice to the sheriff, marked with a seal of renewal.	0	6	8	0	6	8	
Notice thereof to serve on sheriff	0	4	0	0	5	0	
Any writ not included in the above	0	7	0	0	10	0	
These fees include all indorsements and copies, or præcipes, for the officer sealing them, and attendances to issue or seal, but not the court fees.							
Summons to attend at judges' chambers	0	3	0	0	6	8	
Or if special, at taxing officer's discretion, not exceeding	0	6	8	1	1	0	
Copy for the judge, when required	0	2	0	0	2	0	
Or per folio		—		0	0	4	
Original summons for proceedings in chambers in the Chancery Division	0	13	4	1	1	0	
And attending to get same and duplicate sealed, and at the proper office to file duplicate and get copies for service stamped	0	13	4	0	13	4	
Copy for the judge	0	2	0	0	2	0	
Or per folio		—		0	0	4	
Indorsing same and copies under 8th rule of the 35th of the Consolidated General Orders of the Court of Chancery	0	6	8	0	6	8	

Services, Notices, and Demands.

Service of any writ, summons, warrant, interrogatories, petition, order, notice, or demand on a party who has not entered an appearance, and if not authorised to be served by post	0	5	0	0	5	0
If served at a distance of more than two miles from the nearest place of business, or office of the solicitor serving the same, for each mile beyond such two miles therefrom	0	1	0	0	1	0
Where, in consequence of the distance of the party to be served, it is proper to effect such service through an agent (other than the London agent), for correspondence in addition	0	7	0	0	7	0

	Lower Scale. £ s. d.	Higher Scale. £ s. d.
Where more than one attendance is necessary to effect service, or to ground an application for substituted service, such further allowance may be made as the taxing officer shall think fit.		
For service out of the jurisdiction such allowance is to be made as the taxing officer shall think fit.		
Service where an appearance has been entered on the solicitor or party .	0 2 6	0 2 6
Or if authorised to be served by post .	0 1 6	0 1 6
Where any writ, order, and notice, or any two of them, have to be served together, one fee only for service is to be allowed.		
In addition to the above fees, the following allowances are to be made :—		
As to writs, if exceeding two folios, for copy for service, per folio beyond such two	0 0 4	0 0 4
As to summons to attend at the judges' chambers, for each copy to serve .	0 1 0	0 2 0
Or per folio	0 0 4	0 0 4
As to notices in proceedings to wind up companies, for preparing or filling up each notice to creditors to attend and receive debts, and to contributories to settle list of contributories.	0 1 0	0 1 0
And for preparing or filling up each notice to contributories to be served with a general order for a call, or an order for payment of a call . .	0 1 0	0 1 0
And for drawing notice to be served on contributories or creditors of a meeting, per folio	0 1 0	0 1 0
For each copy of the last-mentioned notice to serve, per folio . .	0 0 4	0 0 4
For preparing or filling up for service in any other cause or matter, each notice to creditors to prove claims, and each notice that cheques may be received, specifying the amount to be received for principal and interest, and costs, if any . . .	0 1 0	0 1 0
For preparing notice to produce or admit, and one copy . . .	0 5 0	0 7 6
If special or necessarily long, such allowance as the taxing officer shall think proper, not exceeding per folio	0 0 8	0 1 4

	Lower Scale. £	s.	d.	Higher Scale. £	s.	d.
And for each copy beyond the first, such allowance as the taxing master shall think proper, not exceeding per folio	0	0	4	0	0	4
For preparing notice of motion	0	2	0	0	5	0
Or per folio	0	1	0	0	1	0
Copy for service	0	1	0	0	1	0
Or per folio		—		0	0	4
For preparing any necessary or proper notice, not otherwise provided for, and demand	0	1	6	0	1	6
Or if special, and necessarily exceeding three folios, for preparing same, for each folio beyond three	0	1	0	0	1	0
And for each copy for service, per folio beyond such three	0	0	4	0	0	4
Copies for service of interrogatories and petitions, and of orders with necessary notices (if any) to accompany, per folio	0	0	4	0	0	4
Except as otherwise provided, the allowances for services include copies for service.						
Where notice of filing affidavits is required, only one notice is to be allowed for a set of affidavits filed, or which ought to be filed together.						
In proceedings to wind up a company, the usual charges relating to printing shall be allowed in lieu of copies for service, where the fee for copies would exceed the charges for printing, and amount to more than 3*l*.						
Where any appointment is or ought to be adjourned, service of a notice of the adjournment, or next appointment, is not to be allowed.						
Appearances.						
Entering any appearance	0	6	8	0	6	8
If entered at one time, for more than one person, for every defendant beyond the first	0	1	0	0	2	0
If a person appearing to a writ of summons to recover land limits his defence by his memorandum of appearance, in addition to the above	0	6	8	0	6	8
Instructions.						
To sue or defend	0	6	8	0	13	4
For statement of complaint	0	13	4	2	2	0

	Lower Scale. £	s.	d.	Higher Scale. £	s.	d.
For statement or further statement of defence	0	6	8	0	13	4
For counter-claim	0	6	8	0	13	4
For reply by plaintiff when defendant sets up a counter-claim	0	13	4	1	1	0
For reply or further reply in any other case by plaintiff or other person, with or without joinder of issue	0	6	8	0	13	4
For confession of defence	0	6	8	0	13	4
For joinder of issue without other matter and for demurrer	0	6	8	0	13	4
For special case, special petition, any other pleading (not being a summons), and interrogatories for examination of a party or witness	0	6	8	0	13	4
To amend any pleading	0	6	8	0	13	4
For affidavit in answer to interrogatories, and other special affidavits	0	6	8	0	6	8
To appeal	0	13	4	1	1	0
To add parties by order of Court or Judge	0	6	8	0	13	4
For counsel to advise on evidence when the evidence in chief is to be taken orally	0	6	8	0	6	8
Or not to exceed	0	13	4	1	1	0
For counsel to make any application to a Court or Judge where no other brief	0	6	8	0	10	0
For brief on motion for special injunction	0	13	4	1	1	0
For brief on hearing or trial of action upon notice of trial given, whether such trial be before a Judge, with or without a jury, or before an official or special referee, or on a trial of an issue of fact before a Judge, commissioner, or referee, or on assessment of damages	1	1	0	2	2	0
For such brief, and for brief on the hearing of an appeal when witnesses are to be examined or cross-examined, such fee may be allowed as the taxing officer shall think fit, having regard to all the circumstances of the case, and to other allowances, if any, for attendances on witnesses and procuring evidence.						
The fees for instructions for brief are not to apply to a hearing on further consideration.						

Drawing Pleadings and other Documents.

	Lower Scale. £	s.	d.	Higher Scale. £	s.	d.
Statement of claim	0	10	0	1	1	0
Or per folio	0	1	0	0	1	0
Statement of defence	0	5	0	0	10	0
Or per folio	0	1	0	0	1	0
Statement of defence and counter-claim	0	5	0	1	1	0
Or per folio	0	1	0	0	1	0
Reply, with or without joinder of issue, confession of defence, joinder of issue without other matter, demurrer, and any other pleading (not being a petition or summons) and amendments of any pleading	0	5	0	0	10	0
Or per folio	0	1	0	0	1	0
Particulars, breaches, and objections, when required, and one copy to deliver	0	5	0	0	6	8
On such amount as the taxing officer shall think fit, not exceeding per folio	0	0	8	0	1	4
If more than one copy to be delivered, for each other copy per folio	0	0	4	0	0	4
Special case, whether original or in an action, affidavits in answer to interrogatories and other special affidavits, special petitions, and interrogatories, per folio	0	1	0	0	1	0
Brief, on trial or hearing of cause, issue of fact, assessment of damages, examination of witnesses, demurrer, special case and petition before a Court or Judge, sheriff, commissioner, referee, examiner, or officer of the Court, when necessary and proper in addition to pleadings, including necessary and proper observations, per folio	0	1	0	0	1	0
Brief on application to add parties	0	6	8	0	10	0
Or per folio	0	1	0	0	1	0
Brief on further consideration, per sheet of 10 folios	0	6	8	0	6	8
Accounts, statements, and other documents for the Judges' Chambers, when required, and fair copy to leave, per folio	0	0	8	0	1	4
Advertisements to be signed by Judge's clerk, including attendance therefor	0	6	8	0	13	4
Bill of costs for taxation, including copy for the taxing officer	0	0	8	0	0	8

COPIES.

	Lower Scale. £ s. d.	Higher Scale. £ s. d.
Of pleadings, briefs, and other documents where no other provision is made, at per folio	0 0 4	0 0 4
Where, pursuant to Rules of Court any pleading, special case or petition of right, or evidence is printed, the solicitor of the party printing shall be allowed for a copy for the printer, (except when made by the officer of the court), at per folio . . .	0 0 4	0 0 4
And for examining the proof print, at per folio	0 0 2	0 0 2
And for printing the amount actually and properly paid to the printer, not exceeding ten folios . . .	0 10 0	0 10 0
R.S.C. June, 1880. And in addition for every 20 beyond the first 20 copies, of any document not exceeding 24 folios . . .	0 2 0	0 2 0
And where any part shall properly be printed in a foreign language, or as a fac-simile, or in any unusual or special manner, or where any alteration in the document being printed becomes necessary after the first proof, such further allowance shall be made as the taxing officer shall think reasonable.		
These allowances are to include all attendances on the printer.		
The solicitor for a party entitled to take printed copies shall be allowed, for such number of copies as he shall necessarily or properly take, the amount he shall pay therefor.		
In addition to the allowances for printing and taking printed copies, there shall be allowed for such printed copies as may be necessary or proper for the following but for no other purposes (vide licet) :		
Of any pleading for delivery to the opposite party, or filing in default of appearance		
Of any special case for filing . .		
Of any petition of right for presentation, if presented in print, and for the solicitor of the Treasury, and service on any party		
Of any pleading, special case, or petition of right, for the use of the Court or Judge		

	Lower Scale. £ s. d.	Higher Scale. £ s. d.
Of any affidavit to be sworn to in print		
And of any pleading, special case, petition of right, or evidence for the use of counsel in Court, and in country agency causes when proper to be sent as a close copy for the use of the country solicitor, at per folio .	0 0 2	0 0 3
Such additional allowances for printed copies for the Court or Judge, and for counsel, are not to be made where written copies have been made previously to printing, and are not in any case to be made more than once in the progress of the cause . .		
Close copies, whether printed or written, are not to be allowed as of course, but the allowance is to depend on the propriety of making or sending the copies, which in each case is to be shown and considered by the taxing officer.		
Inserting amendments in a printed copy of any pleading, special case, or petition of right, when not reprinted .	0 1 0	0 5 0
Or per folio	0 0 4	0 0 4

PERUSALS.

Of statement of complaint, statement of defence, reply, joinder of issue, demurrer, and other pleading (not being a petition or summons) by the solicitor of the party to whom the same are delivered	0 6 8	0 13 4
Or per folio	—	0 0 4
Of amendment of any such pleading in writing	0 6 8	0 6 8
Or per folio	—	0 0 4
If same reprinted	0 6 8	0 13 4
Or per folio of amendment. . .	—	0 0 4
Of interrogatories to be answered by a party by his solicitor	0 6 8	0 13 4
Or per folio	—	0 0 4
Of special case by the solicitor of any party except the one by whom it is prepared	0 6 8	0 13 4
Or per folio	—	0 0 4
Of copy order to add parties, notice of defendant's claim against any person not a party to the action under Order XVI., Rule 18, and of defendant's statement of defence and		

	Lower Scale. £	s.	d.	Higher Scale. £	s.	d.
counter-claim served on a person, not a party under Order XXII., Rule 6, by the solicitor of the party served therewith, and in these several cases the perusal of the plaintiff's statement of complaint is also to be allowed unless the solicitor has been previously allowed such perusal .	0	6	8	0	13	4
Or per folio		—		0	0	4
Of notice to produce and notice to admit by the solicitor of the party served	0	6	8	0	13	4
Of affidavit in answer to interrogatories by the solicitor of the party interrogating, and of other special affidavits by the solicitor of the party against whom the same can be read, per folio	0	0	4	0	0	4
Attendances.						
To obtain consent of next friend to sue in his name	0	6	8	0	13	4
To deliver or file any pleading (not being a petition or summons) and a special case	0	3	4	0	6	8
To inspect, or produce for inspection, documents pursuant to a notice to admit	0	6	8	0	13	4
Or per hour	0	6	8	0	6	8
To examine and sign admissions .	0	6	8	0	13	4
To inspect or produce for inspection, documents referred to in any pleading or affidavit, pursuant to notice under Order XXXI., Rule 14 .	0	6	8	0	6	8
Or per hour	0	6	8	0	6	8
To obtain or give any necessary or proper consent	0	6	8	0	6	8
To obtain an appointment to examine witnesses	0	6	8	0	6	8
On examination of witnesses before any examiner, commissioner, officer, or other person	0	13	4	0	13	4
Or according to circumstances not to exceed	2	2	0	2	2	0
Or if without counsel, not to exceed .		—		3	3	0
On deponents being sworn, or by a solicitor or his clerk to be sworn, to an affidavit in answer to interrogatories or other special affidavit .	0	6	8	0	6	8
On a summons at Judges' Chambers .	0	6	8	0	6	8
Or according to circumstances not to exceed	1	1	0	1	1	0

	Lower Scale. £	s.	d.	Higher Scale. £	s.	d.
In the Chancery Division, all allowances for attending at the Judges' Chambers are to be by the Judge or chief clerk as heretofore.						
To file chief clerks' and taxing masters' certificates, and get copy marked as an office copy	0	6	8	0	6	8
On counsel with brief or other papers—						
If counsel's fee one guinea . .	0	3	4	0	6	8
If more and under five guineas .	0	6	8	0	6	8
If five guineas and under 20 guineas	0	6	8	0	13	4
If 20 guineas	0	13	4	1	1	0
If 40 guineas or more . . .		—		2	2	0
On consultation or conference with counsel	0	13	4	0	13	4
To enter or set down action, demurrer, special case, or appeal, for hearing or trial	0	6	8	0	6	8
In Court on motion of course and on counsel and for order . . .	0	10	0	0	13	4
To present petition for order of course and for order	0	6	8	0	13	4
In Court on every special motion, each day	0	6	8	0	13	4
On same when heard each day . .	0	13	4	0	13	4
Or according to circumstances . .	1	1	0	2	2	0
On demurrer, special case, or special petition, or application adjourned from the Judges' Chambers, when in the special paper for the day, or likely to be heard	0	6	8	0	10	0
On same when heard	0	13	4	1	1	0
Or according to circumstances, not to exceed	1	1	0	2	2	0
On hearing or trial of any cause, or matter, or issue of fact, in London or Middlesex, or the town where the solicitor resides or carries on business, whether before a Judge with or without a jury, or commissioner, or referee, or on assessment of damages, when in the paper	0	10	0	0	10	0
When heard or tried	0	13	4	1	1	0
Or according to circumstances . .	2	2	0	2	2	0
When not in London or Middlesex, nor in the town where the solicitor resides or carries on business, for each day (except Sundays) he is necessarily absent	2	2	0	3	3	0
And expenses (besides actual reasonable travelling expenses) each day including Sundays	1	1	0	1	1	0

	Lower Scale. £	s.	d.	Higher Scale. £	s.	d.
Or if the solicitor has to attend on more than one trial or assessment at the same time and place, in each case .	1	1	0	1	11	6
The expenses in such case to be rateably divided.						
To hear judgment when same adjourned	0	6	8	0	13	4
Or according to circumstances . .	0	13	4	1	1	0
To deliver papers (when required) for the use of a Judge prior to a hearing	0	6	8	0	6	8
If more than one judge . . .	0	13	4	0	13	4
On taxation of a bill of costs . .	0	6	8	0	6	8
Or according to circumstances, not to exceed	2	2	0	2	2	0
In causes for purposes within the cognizance of the Court of Chancery before the Act passed, such further fee as the taxing officer may think fit, not exceeding the allowances heretofore made.						
To obtain or give an undertaking to appear	0	6	8	0	6	8
To present a special petition, and for same answered	0	6	8	0	6	8
On printer to insert advertisement in Gazette	0	6	8	0	6	8
On printer to insert same in other papers, each printer		—		0	6	8
Or every two	0	6	8		—	
On registrar to certify that a cause set down is settled, or for any reason not to come into the paper for hearing	0	6	8	0	6	8
For an order drawn up by chief clerk, and to get same entered . .	0	6	8	0	6	8
On counsel to procure certificate that cause proper to be heard as a short cause, and on registrar to mark same	0	6	8	0	6	8
To mark conveyancing counsel or taxing master	0	6	8	0	6	8
For preparing and drawing up an order made at chambers in proceedings to wind-up a company and attending for same, and to get same entered .	0	13	4	0	13	4
And for engrossing every such order, per folio	0	0	4	0	0	4
NOTE.—An order of course means an order made on an *ex parte* application, and to which a party is entitled as of right on his own statement and at his own risk.						

Oaths and Exhibits.

	Lower Scale. £	s.	d.	Higher Scale. £	s.	d.
Commissioners to take oaths or affidavits. For every oath, declaraiton, affirmation, or attestation upon honour in London or the country .	0	1	6	0	1	6
The solicitor for preparing each exhibit in town or country . . .	0	1	0	0	1	0
The commissioner for marking each exhibit	0	1	0	0	1	0

Term Fees.

For every term commencing on the day the sittings in London and Middlesex of the High Court of Justice commence, and terminating on the day preceding the next such sittings, in which a proceeding in the cause or matter by or affecting the party, other than the issuing and serving the writ of summons shall take place . .	0	15	0	0	15	0
And further, in country agency causes or matters, for letters . . .	0	6	0	0	6	0
Where no proceeding in the cause or matter is taken which carries a term fee, a charge for letters may be allowed, if the circumstances require it.						
In addition to the above an allowance is to be made for the necessary expense of postages, carriage and transmission of documents.						

Special Allowances and General Provisions.

Special matter, preparation of.

1. As to writs of summons requiring special indorsement, original special cases, pleadings, and affidavits in answer to interrogatories, and other special affidavits, when the higher scale is applicable, the taxing officer may, in lieu of the allowances for instructions and preparing or drawing, make such allowance for work, labour, and expenses in or about the preparation of such documents as in his discretion he may think proper.

Copy included.

2. As to drawing any pleading or other documents, the fees allowed shall include any copy made for the use of the solicitor, agent, or client, or for counsel to settle.

Instructions.

3. As to instruction to sue or defend, when the higher scale is applicable, if in consequence of the instructions being taken separately from more than three persons (not being co-partners), the taxing officer shall consider the fee above provided inadequate, he may make such further allowance as he shall in his discretion consider reasonable.

Affidavits, preparation of.

4. As to affidavits, when there are several deponents to be sworn, or it is necessary for the purpose of an affidavit being sworn to go to a distance, or to employ an agent, such reasonable allowance may be made as the taxing officer in his discretion may think fit.

Attendances, to settle.

5. The allowances for instructions and drawing an affidavit in answer to interrogatories and other special affidavits, and attending the deponent to be sworn, include all attendances on the deponent to settle and read over.

Services. Same solicitor.

6. As to delivery of pleadings, services, and notices, the fees are not to be allowed when the same solicitor is for both parties, unless it be necessary for the purpose of making an affidavit of service.

Perusal. Same solicitor.

7. As to perusals, the fees are not to apply where the same solicitor is for both parties.

Evidence.

8. As to evidence, such just and reasonable charges and expenses as appear to have been properly incurred in procuring evidence, and the attendance of witnesses, are to be allowed.

Where the Master—under a mistake as to his power—made an order for taxation on the lower scale, the Court directed him to reconsider his decision, as it was a matter of principle; but they refused to interfere with matters purely in his discretion. (*Turnbull* v. *Janson*, 3 C. P. D. 264.)

The fees of surveyors for making surveys necessary for the proper conduct of the case are proper to be allowed on taxation. (*Mackley* v. *Chillingworth*, 2 C. P. D. 273.)

Agency correspondence.

9. As to agency correspondence, in country agency causes and matters, if it be shown to the satisfaction of the taxing officer that such correspondence has been special and extensive he is to be at liberty to make such special allowance in respect thereof as in his discretion he may think proper.

Attendance at Judges' Chambers.

10. As to attendances at the Judges' Chambers, where, from the length of the attendance, or from the difficulty of the case, the Judge or Master shall think the highest of the above fees an insufficient remuneration for the services performed, or where the preparation of the case or matter to lay it before the Judge or Master in chambers, or on a summons shall have required skill and labour for which no fee has been allowed, the Judge or Master may allow such fee in lieu of the fee of 1*l.* 1*s.* above provided, not exceeding 2*l.* 2*s.*; or where the higher scale is applicable 3*l.* 3*s.*, or in proceedings to wind up a company 5*l.* 5*s.*, as in his discretion he may think fit; and where the preparation of the case or matter to lay it before a Judge at chambers on a summons shall have required and received from the solicitor such extraordinary skill and labour as materially to conduce to the satisfactory and speedy disposal of the business, and therefore shall appear to the Judge to deserve higher remuneration than the ordinary fees, the Judge may allow to the solicitor, by a memorandum in writing expressly made for that purpose and signed by the Judge, specifying distinctly the grounds of such allowance, such fee, not exceeding 10 guineas, as in his

discretion he may think fit, instead of the above fees of 2*l.* 2*s.*, 3*l.* 3*s.*, and 5*l.* 5*s.*

Useless attendance.

11. As to attendances at the Judges' Chambers, where by reason of the non-attendance of any party (and it is not considered expedient to proceed *ex parte*), or where by reason of the neglect of any party in not being prepared with any proper evidence, account, or other proceeding, the attendance is adjourned without any useful progress being made, the Judge may order such an amount of costs (if any) as he shall think reasonable to be paid to the party attending by the party so absent or neglectful; or by his solicitor personally; and the party so absent or neglectful is not to be allowed any fee as against any other party, or any estate or fund in which any other party is interested.

Words in folio.

12. A folio is to comprise 72 words, every figure comprised in a column being counted as one word.

Consultation.

13. Such costs of procuring the advice of counsel on the pleadings, evidence, and proceedings in any cause or matter as the taxing officer shall in his discretion think just and reasonable, and of procuring counsel to settle such pleadings and special affidavits as the taxing officer shall in his discretion think proper to be settled by counsel, are to be allowed; but as to affidavits a separate fee is not to be allowed for each affidavit, but one fee for all the affidavits proper to be so settled, which are or ought to be filed at the same time.

Counsel at Chambers.

14. As to counsel attending at Judges' Chambers, no costs thereof shall in any case be allowed, unless the Judge certifies it to be a proper case for counsel to attend.

Inspection of documents.

15. As to inspection of documents under Order XXXI., Rule 14, no allowance is to be made for any notice or inspection, unless it is shown to the satisfaction of the taxing officer that there were good and sufficient reasons for giving such notice and making such inspection.

Copies of documents in possession of another.

16. As to taking copies of documents in possession of another party, or extracts therefrom, under Rules of Court or any special order, the party entitled to take the copy or extract is to pay the solicitor of the party producing the document for such copy or extract as he may, by writing, require, at the rate of 4*d.* per folio; and if the solicitor of the party producing the document refuses or neglects to supply the same, the solicitor requiring the copy or extract is to be at liberty to make it, and the solicitor for the party producing is not to be entitled to any fee in respect thereof.

Costs to be tendered on service of petition.

17. Where a petition in any cause or matter assigned to the Chancery Division is served, and notice is given to the party served that in case of his appearance in Court his costs will be objected to, and accompanied by a tender of costs for perusing the same, the amount to be tendered shall be 2*l.* 2*s.* The party making such payment shall be allowed the same in his costs, provided such service was proper, but not otherwise; but this order is without prejudice to the rights of either party to costs, or to object to costs where no such tender is made, or where the Court or Judge shall consider the party entitled,

notwithstanding such notice or tender, to appear in Court. In any other case in which a solicitor of a party served necessarily or properly peruses any such petition without appearing thereon he is to be allowed a fee not exceeding 2*l.* 2*s.*

Unnecessary proceedings.

18. The Court or Judge may, at the hearing of any cause or matter, or upon any application or procedure in any cause or matter in Court or at Chambers, and whether the same is objected to or not, direct the costs of any pleading, affidavit, evidence, notice to cross-examine witnesses, account, statement, or other proceeding, or any part thereof, which is improper, unnecessary, or contains unnecessary matter, or is of unnecessary length, to be disallowed, or may direct the taxing officer to look into the same and to disallow the costs thereof, or of such part thereof as he shall find to be improper, unnecessary, or to contain unnecesssary matters, or to be of unnecessary length; and in such case the party whose costs are so disallowed shall pay the costs occasioned to the other parties by such unnecessary proceeding, matter, or length; and in any case where such question shall not have been raised before and dealt with by the Court or Judge, the taxing officer may look into the same (and, as to evidence, although the same may be entered as read in any decree or order) for the purpose aforesaid, and thereupon the same consequences shall ensue as if he had been specially directed to do so.

In taxation the Master must inquire into the propriety of proceedings in an action, though not specially directed to do so. He cannot refuse to make the inquiry where an order is made to stay proceedings on payment of costs. (*Baines* v. *Wormsley*, 47 L. J., Ch. 844.)

Set off.

19. In any case in which, under the preceding Rule No. 18, or any other Rule of Court, or by the order or direction of a Court or Judge, or otherwise, a party entitled to receive costs is liable to pay costs to any other party, the taxing officer may tax the costs such party is so liable to pay, and may adjust the same by way of deduction or set off, or may, if he shall think fit, delay the allowance of the costs such party is entitled to receive until he has paid or tendered the costs he is liable to pay; or such officer may allow or certify the costs to be paid, and the same may be recovered by the party entitled thereto in the same manner as costs ordered to be paid may be recovered.

In *Pringle* v. *Gloag*, 10 Ch. D. 676, a defendant was held entitled to set off a debt against the taxed costs he was liable to pay, and the right of set off was not interfered with by the solicitor's lien for costs.

Note by chief clerk.

20. Where in the Chancery Division any question as to any costs is under the preceding Rule 18 dealt with at chambers, the chief clerk is to make a note thereof, and state the same on his allowance of the fees for attendances at chambers, or otherwise as may be convenient for the information of the taxing officer.

Unnecessary appearance.

21. Where any party appears upon any application or proceeding in Court or at Chambers, in which he is not interested, or upon which, according to the practice of the Court, he ought not to attend, he is not to be allowed any costs of such appearance unless the Court or Judge shall expressly direct such costs to be allowed.

For a general disquisition on the rights of parties appearing in chambers to their costs under this rule, see the judgment of Jessel, M.R., in *Sharp* v. *Lush*, 10 Ch. D. 473.

Extension of time. R.S.C. April, 1880.

22*a*. Rule 22 in the schedule to the Additional Rules of the Supreme Court (Costs) is hereby annulled.

The costs of an application to extend the time for taking any proceeding shall, in the absence of an order by the Court or a Judge directing by whom they are to be paid, be in the discretion of the taxing master.

Powers of taxing officers.

23. The taxing officers of the Supreme Court, or of any division thereof, shall, for the purpose of any proceeding before them, have power and authority to administer oaths, and shall, in relation to the taxation of costs, perform all such duties as have heretofore been performed by any of the masters, taxing masters, registrars, or other officers of any of the Courts whose jurisdiction is by the Act transferred to the High Court of Justice or Court of Appeal, and shall, in respect thereof, have such powers and authorities as previous to the commencement of the Act were vested in any of such officers, including examining witnesses, directing production of books, papers, and documents, making separate certificates or allocaturs, requiring any party to be represented by a separate solicitor, and to direct and adopt all such other proceedings as could be directed and adopted by any such officer on references for the taxation of costs, and taking accounts of what is due in respect of such costs, and such other accounts connected therewith as may be directed by the Court or a Judge.

Parties to attend.

24. The taxing officer shall have authority to arrange and direct what parties are to attend before him on the taxation of costs to be borne by a fund or estate, and to disallow the costs of any party whose attendance such officer shall in his discretion consider unnecessary in consequence of the interest of such party in such fund or estate being small or remote, or sufficiently protected by other parties interested.

Refusal or neglect to bring in costs.

25. When any party entitled to costs refuses or neglects to bring in his costs for taxation, or to procure the same to be taxed, and thereby prejudices any other party, the taxing officer shall be at liberty to certify the costs of the other parties, and certify such refusal or neglect, or may allow such party refusing or neglecting a nominal or other sum for such costs, so as to prevent any other party being prejudiced by such refusal or neglect.

Special allowances.

26. As to costs to be paid or borne by another party, no costs are to be allowed which do not appear to the taxing officer to have been necessary or proper for the attainment of justice or defending the rights of the party, or which

appear to the taxing officer to have been incurred through over-caution, negligence, or mistake, or merely at the desire of the party.

Shorthand notes.

Costs of copies of shorthand writers' notes of the evidence will not be allowed on taxation between party and party unless the Judge at the trial so directs. (*Kirkwood* v. *Webster*, 26 W. R. 812.)

The ordinary rule of the Court of Appeal is not to allow the costs of shorthand notes of the evidence in the Court below. It is considered that the Judge's notes should be sufficient. (*Kelly* v. *Byles*, 13 Ch. D. 693.)

Special directions from the Court of Appeal with regard to shorthand notes used in the appeal should be applied for. (*Ashworth* v. *Outram*, 9 Ch. D. 483.)

When the shorthand notes are essential to the proper hearing of the case the costs will be allowed. (*Lee Conservancy Board* v. *Button*, 12 Ch. D. 383; *Duchess of Westminster Ore Co.*, 10 Ch. D. 307.)

Costs of brief copies of notes in a reference for the use of counsel will not be allowed unless by agreement. (*Wells* v. *Mitcham Gas Co.*, 4 Ex. D. 1.)

When the *viva voce* evidence is voluminous, and the parties cannot properly argue the appeal without referring to all parts of it, the Court will allow the costs of printing. (*Bigsby* v. *Dickenson*, 4 Ch. D. 24.)

Counsel's fees.

The Court will not interfere with the Master's discretion as to the amount allowed for counsel's fees unless it has been exercised in an unreasonable manner. (*Hargreaves* v. *Scott*, 4 C. P. D. 21.)

On taxation between party and party, costs of three counsel will be allowed only where the Court considers it a case in which a prudent man would have employed three. (*Kirkwood* v. *Webster*, 9 Ch. D. 239.)

The mere fact that one junior has been called within the bar does not of itself justify a third being retained. (*Re Lafitte*, 20 Eq. 650.)

In taxation of costs in an Admiralty action between solicitor and client, it is not competent for the registrar to consider the disallowance of items said to have been incurred by the negligence of the solicitor. (*The Papa de Rossie*, 3 P. D. 163.)

Further provision.

27. As to any work and labour properly performed and not herein provided for, and in respect of which fees have heretofore been allowed, the same or similar fees are to be allowed for such work and labour as have heretofore been allowed.

Old practice retained.

28. The rules, orders, and practice of any Court whose jurisdiction is transferred to the High Court of Justice or Court of Appeal, relating to costs, and the allowance of the fees of solicitors and attorneys, and the taxation of costs, existing prior to the commencement of the Act, shall, in so far as they are not inconsistent with the Act, and the Rules of Court in pursuance thereof, remain in force and be applicable to costs of the same or analogous proceedings, and to the allowance of the fees of solicitors of the Supreme Court and the taxation of costs in the High Court of Justice and Court of Appeal. (*Pringle* v. *Gloag*, 10 Ch. D. 676, *ante* 464.)

Discretion of taxing officer.

29. As to all fees or allowances which are discretionary, the same are, unless otherwise provided, to be allowed at the

discretion of the taxing officer, who, in the exercise of such discretion, is to take into consideration the other fees and allowances to the solicitor and counsel, if any, in respect of the work to which any such allowance applies, the nature and importance of the cause or matter, the amount involved, the interest of the parties, the fund or persons to bear the costs, the general conduct and costs of the proceedings, and all other circumstances.

Refreshers are within the discretion of the Master. (*Smith* v. *Daniell*, 34 L. T. 899.)

Objection to taxation.

30. Any party who may be dissatisfied with the allowance or disallowance by the taxing officer, in any bill of costs taxed by him, of the whole or any part of any item or items, may, at any time before the certificate or allocatur is signed, deliver to the other party interested therein, and carry in before the taxing officer, an objection in writing to such allowance or disallowance, specifying therein by a list, in a short and concise form, the item or items, or parts or part thereof, objected to, and may thereupon apply to the taxing officer to review the taxation in respect of the same.

When a party makes an objection in writing to the certificate of a Master, he need only state the items, not the reasons of his objections. (*Simmons* v. *Storer*, 14 Ch. D. 154.)

Review of taxation.

31. Upon such application the taxing officer shall reconsider and review his taxation upon such objections, and he may, if he shall think fit, receive further evidence in respect thereof, and, if so required by either party, he shall state either in his certificate of taxation or allocatur, or by reference to such objection, the grounds and reasons of his decision thereon, and any special facts or circumstances relating thereto.

Judge's order for review.

32. Any party who may be dissatisfied with the certificate or allocatur of the taxing officer, as to any item or part of an item which may have been objected to as aforesaid, may apply to a Judge at chambers for an order to review the taxation as to the same item or part of an item, and the Judge may thereupon make such order as to the Judge may seem just; but the certificate or allocatur of the taxing officer shall be final and conclusive as to all matters which shall not have been objected to in manner aforesaid.

Evidence before judge.

33. Such application shall be heard and determined by the Judge upon the evidence which shall have been brought in before the taxing officer, and no further evidence shall be received upon the hearing thereof, unless the Judge shall otherwise direct.

District registry.

34. When a writ of summons for the commencement of an action shall be issued from a district, and when an action proceeds in a district registry, all fees and allowances, and rules and directions relating to costs, which would be applicable to such proceeding if the writ of summons were issued in London, and if the action proceeded in London, shall apply to such writ of summons issued from and other proceedings in the district registry.

COURT FEES.

ORDER AS TO COURT FEES UNDER THE SUPREME COURT OF JUDICATURE ACT, 1875.

[October 28, 1875.]

The Right Honourable Hugh MacCalmont Baron Cairns, Lord High Chancellor of Great Britain, by and with the advice and consent of the undersigned Judges of the Supreme Court, and with the concurrence of the Lords Commissioners of Her Majesty's Treasury, doth hereby in pursuance and execution of the powers given by the Supreme Court of Judicature Act, 1875, and all other powers and authorities enabling him in this behalf, order and direct in manner following :—

I.

Fees and percentages.

THE fees and percentages contained in the schedule hereto are fixed and appointed to be, and shall be taken in the High Court of Justice, and in the Court of Appeal, and in any Court to be created by any commission, and in any office which is connected with any of those Courts, or in which any business connected with any of those Courts is conducted, and by any officer paid wholly or partly out of public monies who is attached to any of those Courts or the Supreme Court, or any Judge of those Courts, or any of them; and the said fees and percentages shall be taken by

To be taken by stamps.

stamps, except those taken in the District Registries, which shall, until further order, be taken in money, and applied and accounted for in such manner as the Treasury may from time to time direct.

II.

The fees and percentages set forth in the column headed "lower scale" in the schedule hereto are to be

taken and paid in all cases in which the lower scale of fees is to be charged and allowed to solicitors under the provisions of the Additional Rules of Court under the Supreme Court of Judicature Act, 1875, issued by Order in Council, dated the 12th day of August, 1875, and the fees and percentages set forth in the column headed "higher scale" in the schedule hereto are to be taken and paid in all other cases.

III.

In causes and matters by the 34th Section of the Supreme Court of Judicature Act, 1873, assigned to the Chancery Division: Chancery Division.

The solicitor or party acting in person shall, on any proceeding in which he claims to pay fees according to the lower scale, file with the proper officer a certificate in the form hereunder set forth, of which certificate the officer is, at the request of any solicitor or any party acting in person in the cause or matter, to mark a copy without a fee. Lower scale.

On production of such copy of the certificate all officers of the Court are to receive and file all proceedings in the cause or matter bearing stamps according to the lower scale.

In any case certified for the lower scale of Court fees, in which it shall happen that the solicitor shall become entitled to charge and be allowed according to the higher scale of solicitors' fees, the deficiency in the fees of Court is to be made good.

In any case in which the fees have been paid upon the higher scale, and in which it shall happen that the solicitor shall become entitled to charge and be allowed only according to the lower scale of solicitors' fees, the excess of fees so paid may be allowed upon the taxation of costs, if the circumstances of the case shall, in the judgment of the taxing officer, justify such allowance. Higher scale.

IV.

The provisions in this Order shall not apply to or affect any of the matters following (that is to say): — Exceptions.

The existing fees and percentages in respect of any of the jurisdictions which are not, by the Supreme Court of Judicature Acts, 1873 and 1875, transferred to the High Court of Justice or the Court of Appeal;

The existing fees and percentages in respect of any matter at the time of the passing of the Supreme Court of Judicature Act, 1875, within the jurisdiction of the Court of Probate, the Court for Divorce and Matrimonial Causes, or the Admiralty Court, or relating to any appeal from the Chief Judge in Bankruptcy, except so far as the procedure in any such matter or the fees or percentages to be taken in respect thereof, is or are expressly varied by the schedule to the said Act, or by this Order, or by any Rules of Court made or to be made by Order in Council before the commencement of the said Act.

The existing fees and percentages in respect of any criminal proceedings, other than such proceedings on the Crown side of the Queen's Bench Division as the scale contained in the schedule hereto may be applicable to;

The existing fees and percentages in respect of matters on the Revenue side of the Exchequer Division and proceedings and business in the office of the Queen's Remembrancer other than such matters, proceedings, and business as the scale contained in the schedule hereto may be applicable to;

The existing fees and percentages authorised to be taken by any sheriffs, under sheriffs, deputy sheriffs, bailiffs, or other officers or ministers of sheriffs;

The existing fees and percentages directed to be taken or paid by any Act of Parliament, and in respect of which no fee or percentage is hereby provided;

The existing fees and percentages which shall have become due or payable before the commencement of the Judicature Acts, 1873 and 1875;

The existing fees and percentages in respect of any proceedings in any cause or matter pending at the commencement of the said Acts, and in respect of which no fee or percentage is hereby provided.

V.

Paupers. The existing rules and practice, applicable to proceedings by persons suing in *formâ pauperis*, shall

continue and be applicable to proceedings to which this Order relates.

VI.

Save as otherwise provided by this Order all existing fees and percentages which may be taken in any of the Courts whose jurisdiction is, by the Judicature Acts, 1873 and 1875, transferred to the High Court of Justice or Court of Appeal, or in any office which is connected with any of those Courts, or in which any business connected with any of those Courts is conducted, or by any officer paid wholly or partly out of public moneys, who is attached to any of those Courts, or the Supreme Court, or any judge of those Courts, or any of them, shall be and are hereby abolished. Existing fees, &c., abolished.

VII.

A folio is to comprise seventy-two words, every figure comprised in a column being counted as one word. Folio.

VIII.

The provisions of Order LXIII. in the first Schedule to the Supreme Court of Judicature Act, 1875, shall apply to this Order. Order LXIII. Act of 1875.

IX.

This Order shall come into operation at the time of the commencement of the Supreme Court of Judicature Acts, 1873 and 1875.

Form of Certificate for paying Lower Scale of Court Fees above referred to :—

(*Title of Cause or Matter.*)

I hereby certify that to the best of my judgment and belief the lower Scale of Fees of Court is applicable to this case.

Dated, &c.

A. B.,

Solicitor for Plaintiff or Defendant.

The existing fees and percentages in respect of any matter at the time of the passing of the Supreme Court of Judicature Act, 1875, within the jurisdiction of the Court of Probate, the Court for Divorce and Matrimonial Causes, or the Admiralty Court, or relating to any appeal from the Chief Judge in Bankruptcy, except so far as the procedure in any such matter or the fees or percentages to be taken in respect thereof, is or are expressly varied by the schedule to the said Act, or by this Order, or by any Rules of Court made or to be made by Order in Council before the commencement of the said Act.

The existing fees and percentages in respect of any criminal proceedings, other than such proceedings on the Crown side of the Queen's Bench Division as the scale contained in the schedule hereto may be applicable to;

The existing fees and percentages in respect of matters on the Revenue side of the Exchequer Division and proceedings and business in the office of the Queen's Remembrancer other than such matters, proceedings, and business as the scale contained in the schedule hereto may be applicable to;

The existing fees and percentages authorised to be taken by any sheriffs, under sheriffs, deputy sheriffs, bailiffs, or other officers or ministers of sheriffs;

The existing fees and percentages directed to be taken or paid by any Act of Parliament, and in respect of which no fee or percentage is hereby provided;

The existing fees and percentages which shall have become due or payable before the commencement of the Judicature Acts, 1873 and 1875;

The existing fees and percentages in respect of any proceedings in any cause or matter pending at the commencement of the said Acts, and in respect of which no fee or percentage is hereby provided.

V.

Paupers. The existing rules and practice, applicable to proceedings by persons suing in *formâ pauperis*, shall

continue and be applicable to proceedings to which this Order relates.

VI.

Save as otherwise provided by this Order all existing fees and percentages which may be taken in any of the Courts whose jurisdiction is, by the Judicature Acts, 1873 and 1875, transferred to the High Court of Justice or Court of Appeal, or in any office which is connected with any of those Courts, or in which any business connected with any of those Courts is conducted, or by any officer paid wholly or partly out of public moneys, who is attached to any of those Courts, or the Supreme Court, or any judge of those Courts, or any of them, shall be and are hereby abolished. Existing fees, &c., abolished.

VII.

A folio is to comprise seventy-two words, every figure comprised in a column being counted as one word. Folio.

VIII.

The provisions of Order LXIII. in the first Schedule to the Supreme Court of Judicature Act, 1875, shall apply to this Order. Order LXIII. Act of 1875.

IX.

This Order shall come into operation at the time of the commencement of the Supreme Court of Judicature Acts, 1873 and 1875.

Form of Certificate for paying Lower Scale of Court Fees above referred to :—

(*Title of Cause or Matter.*)

I hereby certify that to the best of my judgment and belief the lower Scale of Fees of Court is applicable to this case.

Dated, &c.

A. B.,

Solicitor for Plaintiff or Defendant.

The Schedule above referred to.

An Order or Rule herein referred to by number shall mean the Order or Rule so numbered in the First Schedule to the Supreme Court of Judicature Act, 1875.

Summonses, Writs, Commissions, and Warrants.

	Lower Scale. £	s.	d.	Higher Scale. £	s.	d.
On sealing a writ of summons for commencement of an action . .	0	5	0	0	10	0
On sealing a concurrent, renewed or amended writ of summons for commencement of an action . .	0	2	6	0	2	6
On sealing a notice for service under Order XVI., Rule 18 . . .	0	2	6	0	2	6
On sealing a writ of mandamus or injunction	0	10	0	1	0	0
On sealing a writ of subpœna not exceeding three persons . . .	0	2	6	0	5	0
On sealing every other writ . .	0	5	0	0	10	0
On sealing a summons to originate proceedings in the Chancery Division .	0	5	0	0	10	0
On sealing a duplicate thereof . .	0	1	0	0	5	0
On sealing a copy of same for service .	0	1	0	0	5	0
On sealing or issuing any other summons or warrant	0	2	0	0	3	0
On sealing or issuing a commission to take oaths or affidavits in the Supreme Court	5	0	0	5	0	0
Every other commission . . .	1	0	0	1	0	0
On marking a copy of a petition of right for service	0	1	0	0	5	0

Appearances.

On entering an appearance, for each person	0	2	0	0	2	0

Copies.

For a copy of a written deposition of a witness to enable a party to print the same, for each folio . . .	0	0	4	0	0	4
For examining a written or printed copy, and marking same as an office copy, for each folio . . .	0	0	2	0	0	2
For making a copy and marking same as an office copy, for each folio .	0	0	6	0	0	6
For a copy in a foreign language, the actual cost.						
For a copy of a plan, map, section, drawing, photograph, or diagram, the actual cost.						
For a printed copy of an order not being an office or certified copy, for each folio	0	0	1	0		10

Attendances.

	Lower Scale. £ s. d.	Higher Scale. £ s. d.
On an application, with or without a subpœna, for any officer to attend as a witness, or to produce any record or document to be given in evidence (in addition to the reasonable expenses of the officer) for each day or part of a day he shall necessarily be absent from his office . . .	1 0 0	1 0 0
The officer may require a deposit of stamps on account of any further fees, and a deposit of money on account of any further expenses which may probably become payable beyond the amount paid for fees and expenses on the application, and the officer or his clerk taking such deposit shall thereupon make a memorandum thereof on the application.		
The officer may also require an undertaking in writing to pay any further fees and expenses which may become payable beyond the amounts so paid and deposited.		

Oaths, &c.

For taking an affidavit or an affirmation or attestation upon honour in lieu of an affidavit or a declaration, except for the purpose of receipt of dividends from the Paymaster-General, for each person making the same	0 1 6	0 1 6
And in addition thereto for each exhibit therein referred to and required to be marked, whether annexed or not	0 1 0	0 1 0

Filing.

On filing a special case or petition of right	0 10 0	1 0 0
On filing an affidavit with exhibits (if any) annexed, submission to arbitration, award, bill of sale, warrant of attorney, cognovit, bail, satisfaction piece, and writ of execution with return	0 2 0	0 2 0
On filing a scheme pursuant to the Statute 30 & 31 Vict., c. 127, or the Liquidation Act, 1868 . . .	1 0 0	1 0 0
On filing a caveat	0 5 0	0 5 0

Certificates.

	Lower Scale. £. s. d.	Higher Scale. £ s. d.
For a certificate of appearance, or of a pleading affidavit, or proceeding having been entered, filed, or taken, or of the negative thereof . .	0 1 0	0 4 0

Searches and Inspections.

On an application to search for an appearance or an affidavit, and inspecting the same	0 1 0	0 1 0
On an application to search an index and inspect a pleading, decree, order or other record, unless otherwise expressly provided for by any act of Parliament or this Order, and to inspect documents deposited for safe custody or production pursuant to an order, for each hour or part of an hour occupied	0 2 6	0 2 6
Not exceeding on one day . . .	0 10 0	0 10 0

Examination of Witnesses.

For every witness sworn and examined by an examiner or other officer in his office, including oath, for each hour	0 10 0	0 10 0
For an examination of witnesses by any such officer away from the office (in addition to reasonable travelling and other expenses), per day . .	3 0 0	3 0 0
The officer may require a deposit of stamps on account of fees and a deposit of money on account of expenses, which may probably become payable beyond any amount paid for fees and expenses upon the examination, and the officer or his clerk taking such deposit shall thereupon make a memorandum thereof and deliver the same to the party making the deposit		
The officer may also require an undertaking, in writing, to pay any further fees and expenses which may become payable beyond the amount so paid and deposited.		
These fees are not to apply to the examination of witnesses for the purpose of any inquiry, taxation of costs, or other proceedings before the officer.		

	Lower Scale. £ s. d.	Higher Scale. £ s. d.
HEARING.		
For entering or setting down, or re-entering or re-setting down an appeal to the Court of Appeal, or a cause for trial or hearing in any Court in London or Middlesex, or at any Assizes, including a demurrer, special case, and petition of right, but not any other petition, nor a summons adjourned from Chambers	1 0 0	2 0 0
For a certificate of an associate of the result of trial.	1 0 0	1 0 0
JUDGMENTS, DECREES, AND ORDERS.		
For drawing up and entering a judgment, or a decree or decretal order, whether on the original hearing of a cause or on further consideration, including a cause commenced by summons at chambers, and an order on the hearing of a special case or petition, and any order by the Court of Appeal	0 10 0	1 0 0
For drawing up and entering any other order, whether made in Court or at chambers	0 3 0	0 5 0
For copy of a plan, map, section, drawing, photograph, or diagram, required to accompany any order, the actual cost.		
TAKING ACCOUNTS.		
On taking an account of a receiver, guardian, consignee, bailee, manager, provisional, official, or voluntary liquidator, or sequestrator, or of an executor, administrator, trustee, agent, solicitor, mortgagee, co-tenant, co-partner, execution creditor, or other person liable to account, when the amount found to have been received without deducting any payment shall not exceed 200*l.* . .	0 2 0	0 2 0
Where such amount shall exceed 200*l.* for every 50*l.* or fraction of 50*l.* .	0 0 6	0 0 6
In the case of any such receiver, guardian, consignee, bailee, manager, liquidator, sequestrator, or execution creditor, the fees shall, upon payment, be allowed in the account unless the Court or Judge shall		

	Lower Scale, £ s. d.	Higher Scale, £ s. d.
otherwise direct, and in the case of taking the accounts of such other accounting parties the fees shall be paid by the party having the conduct of the order under which such account is taken as part of his costs of the cause or matter (unless the Court or Judge shall otherwise direct), and in such case shall be taken upon the certificate of the result of any such account; but the fees shall be due and payable, although no certificate is required, on the account taken, or on such part thereof as may be taken, and the solicitor or party suing in person shall in such case cause the proper stamps (the amount thereof to be fixed by the officer) to be impressed on or affixed to the account.		
The officer taking the account may require a deposit of stamps on account of fees before taking the account, not exceeding the fees on the full amount appearing by the account to have been received, and the officer or his clerk taking such deposit shall make a memorandum thereof on the account.		

Taxation of Costs.

For taxing a bill of costs where the amount allowed does not exceed 8*l.*	0 2 0	0 4 0
Where the amount exceeds 8*l.*, for every 2*l.* allowed, or a fraction thereof	0 0 6	0 1 0
These fees except where otherwise provided shall be taken on signing the certificate or on the allowance of the bill of costs, as taxed, but the fees shall be due and payable if no certificate or allocatur is required on the amount of the bill as taxed, or on the amount of such part thereof as may be taxed, and the solicitor or party suing in person shall in such case cause the proper stamps (the amount thereof to be fixed by the officer) to be impressed on or affixed to the bill of costs.		

	Lower Scale. £ s. d.	Higher Scale. £ s. d.
The taxing officer may require a deposit of stamps on account of fees before taxation not exceeding the fees on the full amount of the costs as submitted for taxation, and the officer or his clerk on taking such deposit shall make a memorandum thereof on the bill of costs.		
For a certificate or allocatur of the result not being a judgment . . .	0 0 0	1 0 0
The 58th Rule of Order V. of the Chancery Funds Consolidated Rules, 1874, shall continue in force and be acted upon in cases to which it is applicable.		
PETITIONS.		
For answering a petition for hearing in Court and setting down . . .	0 5 0	1 0 0
For answering a non-attendable petition, not being a petition for an order of course	0 5 0	0 10 0
On a matter of course order, on a petition of right	0 10 0	0 10 0
On an order for a commission on a petition of right	1 0 0	1 0 0
REGISTER OF JUDGMENTS AND LIS PENDENS.		
For registering a judgment or lis pendens, although more than one name may have to be registered . .	0 2 6	0 2 6
For re-registering same . . .	0 1 0	0 1 0
For a search for each name . .	0 1 0	0 1 0
For a certificate of entry of satisfaction	0 1 0	0 1 0
For certificate of a judgment for registration in Ireland or Scotland under the Judgments Extension Act, 1868, including affidavit	0 2 0	0 2 0
On filing for registration a certificate issued out of Courts of Dublin or Court of Session in Scotland under the same Act, although more than one may have to be registered under the same Act	0 7 0	0 7 0
On every certificate of the entry of a satisfaction under the same Act .	0 1 0	0 1 0
For a search made in one or both of the Registers of Irish and Scotch judgments, for each name . . .	0 1 0	0 1 0
MISCELLANEOUS.		
On a report of a Private Bill in Parliament	5 0 0	5 0 0

	Lower Scale. £	s.	d.	Higher Scale. £	s.	d.
On an allowance of bye-laws or table of fees	1	0	0	1	0	0
On a fiat of a Judge	0	5	0	0	5	0
On signing an advertisement		—		1	0	0
Upon a reference to a Master of the Queen's Bench, Common Pleas, or Exchequer Divisions, or a District Registrar, for the purpose of any investigation or inquiry, other than the taking of an account for which another fee is herein provided, for every hour or part of an hour the Master or Registrar is occupied	0	10	0	0	10	0
A deposit on account of fees before proceeding with such reference, or at any time during the course thereof, may be required, and a memorandum thereof shall be delivered to the party making the deposit.						
On taking acknowledgment of a deed by a married woman	1	0	0	1	0	0
On taking a recognizance or bond	0	10	0	0	10	0
On taking bail, and taking same off the file and delivering	0	2	0	0	2	0
On a commitment	0	5	0	0	5	0
On an application to produce Judge's notes	0	5	0	0	5	0
On appointment of commissioners under glebe exchange	1	0	0	1	0	0
On examining and signing inrolments of decrees and orders	3	0	0	3	0	0
On admission or re-admission of a solicitor.	5	0	0	5	0	0
On a written request for information at the Chancery Pay Office	0	2	6	0	2	6
For preparing a power of attorney at the Chancery Pay Office	0	3	0	0	3	0
For transcript of an account in the books at the Chancery Pay Office, for each opening	0	2	0	0	2	0

ORDERS FOR TAKING FEES BY STAMPS.

Order as to the taking of the Fees and Percentages in the Supreme Court of Judicature by Stamps, except in the District Registries.

[October 28th, 1875.]

WHEREAS, by Section 26 of the Supreme Court of Judicature Act, 1875, it is provided that the fees and per centages appointed to be taken in the High Court

of Justice and in the Court of Appeal, and in any Court to be created by any Commission, and in any office which is connected with any of those Courts or in which any business connected with any of those Courts is conducted, shall, except so far as they be otherwise directed, be taken by means of stamps; and further, that such stamps shall be impressed or adhesive, as the Treasury may from time to time direct; and that the Treasury, with the concurrence of the Lord Chancellor, may from time to time make such rules as may seem fit for publishing the amount of the fees and regulating the use of such stamps, and particularly for prescribing the application thereof to documents from time to time in use or required to be used for the purposes of such stamps, and for ensuring the proper cancellation of such stamps.

Now we, the undersigned, being two of the Lords Commissioners of Her Majesty's Treasury, do, with the concurrence of the Lord Chancellor, hereby give notice and order and direct—

1. That from and after the 1st November next, being the date fixed for the commencement of this Act, all orders and regulations now in force with respect to the use, proper cancellation, mode of keeping accounts, and allowance of fee stamps in

The Court of Chancery,
„ several Common Law Courts,
„ Court of Probate,
„ Court for Divorce and Matrimonial Causes,
„ Admiralty Court,

or in relation to appeals from the Chief Judge in Bankruptcy, or from the Court of Appeal in Chancery in Bankruptcy matters, shall continue in force up to the beginning of the sittings to take place after January next, or until they shall respectively be altered or annulled by rules hereafter to be made and published in conformity with the Act.

2. That the stamps to be used in the collection of fees and percentages payable under the Order made in pursuance of the powers given by the Supreme Court of Judicature Act, 1875, bearing date this day, shall until further notice be either impressed or adhesive as directed in any previous Order; and in cases to which no previous Order is applicable, shall be either impressed or adhesive, at the option of the parties by whom the fees are payable.

3. That until we do order to the contrary, the dies

heretofore in use for impressing stamps in any of the Courts affected by the said Act, and also the adhesive stamps heretofore in use, shall be available and valid for the taking of the said fees and percentages, and may be used notwithstanding that new dies and stamps appropriated to the Supreme Court of Judicature may in the meantime have been issued by the Commissioners of Inland Revenue, which will also be valid and available.

4. That for such documents in the Chancery, the Queen's Bench, the Common Pleas, and the Exchequer Divisions of the Supreme Court of Judicature as may be, under any existing Rule or Order, stamped with an adhesive stamp or stamps, adhesive stamps appropriated by the words "Judicature Fees" shall be used; Provided always that up to the beginning of the sittings to take place after January next, the adhesive stamps hitherto used in the Courts of Chancery and Common Law shall be available and may be used for such documents in the Supreme Court of Judicature.

5. And that where any of such fees are payable in respect of any matter or thing to be done by any officer or in any office whatever of the Supreme Court of Judicature, and it shall not have been customary or may not be necessary to use any written or printed document or paper in reference to such matter or thing whereon the stamp could be stamped or affixed, the party or his solicitor requiring such matter or thing to be done, shall make application for the same by a præcipe, or short note in writing or print, and a stamp denoting the amount of the fees so payable shall be stamped or affixed to such præcipe or note.

6. That where a fee is payable, but no directions are found in previous Orders as to the document to which the stamp is to be applied, it shall be lawful, until we do otherwise order, for any officer of the Supreme Court whose duty it would be to see that the fee in question is duly paid by means of a stamp, to decide on what document such stamp shall be impressed or affixed.

Given under our hands,

MAHON,
ROW. WINN.

I hereby signify my concurrence in the beforementioned rules and regulations.

CAIRNS, C.

2. *Order as to the Fees and Percentages which are required to be taken in the Supreme Court of Judicature by means of* STAMPS.

[22nd April, 1876.]

WHEREAS by section 26 of the Supreme Court of Judicature Act, 1875, it is provided that the fees and percentages appointed to be taken in the High Court of Justice and in the Court of Appeal, and in any Court to be created by any commission, and in any office which is connected with any of those Courts, or in which any business connected with any of those Courts is conducted, shall, except so far as they be otherwise directed, be taken by means of stamps; and further, that such stamps shall be impressed or adhesive, as the Treasury may from time to time direct; and that the Treasury, with the concurrence of the Lord Chancellor, may from time to time make such rules as may seem fit for publishing the amount of the fees and regulating the use of such stamps, and particularly for prescribing the application thereof to documents from time to time in use or required to be used for the purposes of such stamps, and for ensuring the proper cancellation of such stamps, and for keeping accounts of such stamps.

And whereas by an Order made under the same section of the said Act on the 28th day of October, 1875, it was (amongst other things) provided that the stamps to be used in the collection of the fees and percentages therein mentioned should, until further notice, be either impressed or adhesive as directed in any previous Order, and in cases to which no previous Order was applicable should be either impressed or adhesive, at the option of the parties by whom the fees were payable; and it was also provided that up to the beginning of the sittings on the 25th day of April, 1876, the adhesive stamps used before the publication of the said Order in the Courts of Chancery and Common Law should be available, and might be used, in the Supreme Court of Judicature.

And whereas it is expedient to further extend the use of the same stamps, and to make other provisions in lieu of, and in addition to, those contained in the said Order of the 28th day of October, 1875.

Now, we, the undersigned, being two of the Lords Commissioners of Her Majesty's Treasury, do, with

the concurrence of the Lord Chancellor, hereby give notice, and order and direct :—

1. That from and after the 25th day of April, 1876, the stamps used for denoting the said fees and percentages shall be of the character, and be applied and otherwise dealt with, as prescribed by the schedule hereto.

2. That the adhesive stamps at present in use in the Supreme Court of Judicature shall continue to be used so long as they are supplied by the Commissioners of Inland Revenue.

3. That in any case in which a deposit on account of probable fees and expenses is required, the following regulations shall be observed :—

AS TO DEPOSITS.

(*a.*) The party, or his solicitor, from whom under any Order as to Court fees a deposit may be required, shall, before the matter or cause be proceeded with, present for the signature of the officer of the Court requiring the deposit, a certificate, duly stamped, for the amount of such deposit. Forms of certificates provided by the Commissioners of Inland Revenue may be obtained at the Inland Revenue Office, Somerset House, or at such other places as the Commissioners may appoint.

(*b.*) When the fees and expenses are ascertained, the said Officer of the Court shall endorse upon the said certificate the amount thereof.

(*c.*) If the amount is in excess of the deposit, the certificate, bearing an additional stamp equal to the excess, must be produced to the said Officer before he delivers his judgment or award, or gives his decision in the matter or cause.

(*d.*) If the amount of the fees and expenses is less than the deposit, the holder of the certificate may obtain repayment of the difference upon presenting the certificate so endorsed at the Inland Revenue Office, Somerset House.

The SCHEDULE above referred to.

SUMMONSES, WRITS, COMMISSIONS, AND WARRANTS.

	Document to be Stamped.	Character of Stamp to be used.	Regulations and Observations.
On sealing a writ of summons for commencement of an action. On sealing a concurrent, renewed, or amended writ of summons for commencement of an action.	Writ of summons.	Impressed or adhesive.	Forms of writ with the impressed stamp will be sold at the Inland Revenue Office, and by Law Stationers.
On sealing a notice for service under Order XVI., Rule 18.	Notice . .	Impressed or adhesive.	Forms with the impressed stamp will be sold at the Inland Revenue Office and by Law Stationers.
On sealing a writ of mandamus or injunction. On sealing a writ of subpœna not exceeding three persons. On sealing every other writ.	Præcipe left at time of issuing writ.	Impressed.	Præcipes with the impressed stamp will be sold at the Inland Revenue Office and by Law Stationers.
On sealing a summons to originate proceedings in the Chancery Division.	Summons.	Impressed.	A form of summons will be sold at the Inland Revenue Office and by Law Stationers.
On sealing a duplicate thereof.	Duplicate summons.	Impressed.	
On sealing a copy of same for service.	Copy of summons.	Impressed or adhesive.	
On sealing or issuing any other summons or warrant.	Summons. .	Impressed or adhesive.	
On sealing or issuing a commission to take oaths or affidavits in the Supreme Court.	Commission .	Impressed.	Forms of commission with the impressed stamp will be sold at the Inland Revenue Office.

SUMMONSES, WRITS, COMMISSIONS, AND WARRANTS—*continued.*

	Document to be Stamped.	Character of Stamp to be used.	Regulations and Observations.
Every other commission.	Commission .	Impressed.	The commission or the copy of petition to be written on impressed paper, or the document to be produced at the Inland Revenue to be stamped.
On marking a copy of a petition of right for service.	Copy of petition.	Impressed.	

APPEARANCES.

The fee payable on entering an appearance to be denoted by an impressed stamp on the form of memorandum as prescribed by the Appendix to the Supreme Court of Judicature Act, 1875, and where the appearance of more than one person is entered by the same memorandum, the fees for all persons beyond the first to be denoted by means of impressed or adhesive stamps.

Forms of memorandum of appearance with the impressed stamp for one or more defendants will be sold at the Inland Revenue Office and by Law Stationers.

COPIES.

	Document to be Stamped.	Character of Stamp to be used.
For a copy of a written deposition of a witness to enable a party to print the same.	Copy	Impressed or adhesive.
For examining a written or printed copy, and marking same as an office copy.	Copy	Impressed or adhesive.
For making a copy, and marking same as an office copy.	Copy	Impressed or adhesive.
For a copy in a foreign language.	Copy	Impressed or adhesive.
For a copy of a plan, map, section, drawing, photograph, or diagram.	Præcipe or copy .	Impressed or adhesive.
For a printed copy of an order, not being an office or certified copy.	Copy	Impressed or adhesive.

ATTENDANCES.

The fees payable under this heading to be denoted either by an impressed or adhesive stamp on the subpœna, notice, or other document requiring the attendance of the officer.

If the officer's attendance be required beyond one day, the additional fee per diem after the first to be taken by means of a præcipe with the impressed stamp, filed in the department from which the officer is summoned.

OATHS, &c.

———	Document to be Stamped.	Character of Stamp to be used.	Regulations and Observations.
For taking an affidavit or an affirmation or attestation upon honour in lieu of an affidavit or a declaration, except for the purpose of receipt of dividends from the Paymaster - General on which no fee is payable.	Affidavit or other document answering thereto.	Impressed or adhesive.	

———	Document to be Stamped, and Character of Stamp to be used.	Regulations and Observations.
And in addition thereto, for each exhibit therein referred to and required to be marked.	Stamp to be impressed or adhesive on exhibit if practicable, but if not, to be impressed on præcipe filed.	

FILING.

———	Document to be Stamped.	Character of Stamp to be used.	Regulations and Observations.
On filing a special case or petition of right .	Special case, petition of right, or præcipe.	Impressed.	Where practicable stamp to be on special case or petition of right, and in other cases on præcipe filed.
On filing an affidavit with exhibits (if any) annexed, submission to arbitration, award, bill of sale, warrant of attorney, cognovit, bail satisfaction piece, and writ of execution with return.	Document filed.	Impressed or adhesive.	
On filing a scheme pursuant to the statute 30 & 31 Vict. c. 127, or the Liquidation Act, 1868.	Scheme.	Impressed.	
On filing a caveat . .	Caveat . .	Impressed.	

CERTIFICATES.

——	Document to be Stamped.	Character of Stamp to be used.	Regulations and Observations.
For a certificate of appearance, or of a pleading, affidavit, proceeding having been entered, filed, or taken, or of the negative thereof.	Certificate.	Impressed or adhesive.	Forms of certificate with the impressed stamp will be sold at the Inland Revenue Office and by law stationers.

SEARCHES AND INSPECTIONS.

The fees on searches and inspections to be taken by means of impressed stamps on a form which will be issued at the Inland Revenue Office, and sold there, and by law stationers.

EXAMINATION OF WITNESSES.

The fees under this heading may still be denoted by means of adhesive stamps, which may be affixed either to the deposition or to the order or application paper for examination.

HEARING.

——	Document to be Stamped.	Character of Stamp to be used.	Regulations and Observations.
For entering or setting down, or re-entering or resetting down, an appeal to the Court of Appeal, or a cause for trial or hearing in any Court in London or Middlesex, or at any Assizes, including a demurrer, special case, and petition of right, but not any other petition, nor a summons adjourned from Chambers.	In the Registry Office, Chancery Division, on forms provided for the purpose.	Impressed.	Forms, with the impressed stamp, will be sold at the Inland Revenue, and at the Registrar's Office, Chancery Division.
	At offices of Associates on copy of pleadings.	Impressed or adhesive.	
	At all other offices of the High Court or Court of Appeal on præcipe.	Impressed.	
For certificate of an Associate of the result of trial.	Certificate.	Impressed or adhesive.	

JUDGMENTS, DECREES, AND ORDERS.

——	Document to be Stamped.	Character of Stamp to be used.	Regulations and Observations.
For drawing up and entering a judgment, or decree or decretal order, whether on the original hearing of a cause or on further consideration, including a cause commenced by summons at Chambers, and an order on the hearing of a special case or petition, and any order by the Court of Appeal.	Judgment or order.	Stamp to be impressed or adhesive on the judgment or order, except at the Crown Office, where, as far as practicable, a præcipe, with the impressed stamp, should be used.	
For drawing up and entering any other order, whether made in Court or at Chambers.	Order . . .	Impressed or adhesive.	
For copy of a plan, map, section, drawing, photograph, or diagram required to accompany any order.	Copy . . .	Impressed or adhesive.	Where an adhesive stamp would damage the copy, a præcipe with the impressed stamp should be used.

TAKING ACCOUNTS.

The fees payable under this heading when taken on the accounts to be denoted by means of adhesive stamps affixed to the accounts or by impressed stamps on paper to be left at the office, but when taken on a certificate they may be denoted either by impressed or adhesive stamps.

TAXATION OF COSTS.

——	Document to be Stamped.	Character of Stamp to be used.	Regulations and Observations.
For taxing a bill of costs.	Stamp to be adhesive on bill of costs, but where a certificate, allocatur, or præcipe is used, the fee to be denoted by impressed stamps.		
For a certificate or allocatur of the result, not being a judgment.	Certificate or allocatur.	Impressed.	

PETITIONS.

	Document to be Stamped.	Character of Stamp to be used.	Regulations and Observations.
For answering a petition for hearing in Court, and setting down.	Petition . .	Impressed or adhesive.	
For answering a non-attendable petition, not being a petition for an order of course.	Petition . .	Impressed or adhesive.	
On a matter of course order on a petition of right.	Order . . .	Impressed or adhesive.	
On an order for a commission on a petition of right.	Order . . .	Impressed.	

REGISTER OF JUDGMENTS AND LIS PENDENS.

	Document to be Stamped.	Character of Stamp to be used.	Regulations and Observations.
For registering a judgment or lis pendens For re-registering same	Memorandum of registry.	Impressed.	Forms with the impressed stamp will be sold at the office of the Registrar of Judgments, Common Pleas Division.
For a search	General form of search præcipe.		
For a certificate of entry of satisfaction	Certificate.		
For a certificate of a judgment for registration in Ireland or Scotland under the Judgments Extension Act, 1868, including affidavit . .	Certificate.	Impressed or adhesive.	
On filing for registration a certificate issued out of Courts of Dublin or Court of Session in Scotland under the same Act			
On every certificate of the entry of a satisfaction under the same Act			

REGISTER OF JUDGMENTS AND LIS PENDENS—*continued.*

———	Document to be Stamped.	Character of Stamp to be used.	Regulations and Observations.
For a search made in one or both of the registers of Irish and Scotch judgments.	Præcipe.	Impressed.	Forms of Præcipe, with the impressed stamp, will be sold at the Inland Revenue Office, and by law stationers.

MISCELLANEOUS.

———	Document to be Stamped.	Character of Stamp to be used.	Regulations and Observations.
On a report of a Private Bill in Parliament.	Report . .	Impressed.	
On an allowance of bye-laws or table of fees.	Allowance .	Impressed.	
On a fiat of a Judge .	Fiat . . .	Impressed or adhesive.	
On signing an advertisement.	Advertisement	Impressed.	
Upon a reference to a Master of the Queen's Bench, Common Pleas, or Exchequer Divisions, for the purpose of any investigation or inquiry other than the taking of an account for which another fee is herein provided.	Certificate or other document used in giving the decision.	Impressed or adhesive.	
On taking acknowledgment of a deed by a married woman.	Acknowledgment.	Impressed.	Forms with the impressed stamp will be sold at the Inland Revenue Office.
On taking a recognizance or bond.	Recognizance.	Impressed or adhesive.	
On taking bail, and taking same off the file and delivering.	Bail piece. .	Impressed or adhesive.	

MISCELLANEOUS—*continued.*

——	Document to be Stamped.	Character of Stamp to be used.	Regulations and Observations.
On a commitment . .	Commitment .	Impressed or adhesive.	
On an application to produce Judges' notes	Application .		
On appointment of Commissioners under glebe exchange.	Appointment.	Impressed.	
On examining and signing inrolments of decrees and orders.	Inrolment. .	Impressed or adhesive.	
On admission or re-admission of a solicitor.	Admission .	Impressed.	Forms of admission with the impressed stamp will be sold at the Inland Revenue Office.
On a written request for information at the Chancery Pay Office.	Præcipe . .	Impressed.	
For preparing a power of attorney at the Chancery Pay Office.	Power . . .		
For transcript of an account in the books at the Chancery Pay Office.	Transcript .	Impressed or adhesive.	
Any other proceeding, pleading, or document not hereinbefore specified.	Document or Præcipe.	Impressed or adhesive.	These are to be impressed, if practicable, where not filed in the office.

GENERAL DIRECTIONS.

In any case in which the use of impressed stamps is prescribed, paper or parchment on which the document requiring a stamp is to be written may be stamped at the Inland Revenue Office, notwithstanding that stamped forms are also provided by the Commissioners of Inland Revenue.

The cancellation shall be effected in such manner as the Commissioners of Inland Revenue shall from time to time direct.

CRICHTON.
J. D. H. ELPHINSTONE.

I concur in this Order.

CAIRNS, C.

ORDER AS TO THE FEES TO BE TAKEN BY THE OFFICIAL REFEREES.

[24th April, 1877.]

The Right Honourable Hugh MacCalmont Baron Cairns, Lord High Chancellor of Great Britain, with the advice and consent of the under-signed Judges of the Supreme Court, and with the concurrence of the Lords Commissioners of Her Majesty's Treasury, doth hereby, in exercise of the powers for this purpose given by the Supreme Court of Judicature Act, 1875, and of all other powers and authorities enabling him in this behalf, rescind, as to all matters, questions, or issues which shall be referred to an Official Referee from and after the date hereof, the Order as to the Fees to be taken by the Official Referees made on the 1st day of February, 1876, and doth order and direct as follows :—

From and after the date hereof, the fee to be taken by an Official Referee attached to the Supreme Court, in respect of all matters, questions, or issues referred to him by any Order, shall be the sum of 5*l.* for the entire reference, irrespective of the time occupied, which sum shall be paid before the reference is proceeded with.

Every such fee shall be collected by means of a stamp or stamps to be affixed to the appointment paper or summons issued by the Official Referee for appointing the time and place for proceeding with the reference.

Where the sittings under a reference are to be held elsewhere than in London, a convenient place in which the sittings may be held shall be provided to the satisfaction of the Official Referee, by and at the expense of the party proceeding with the reference ; and there shall be paid, in addition to the above fee of 5*l.*, 1*l.* 11*s.* 6*d.* for every night the Official Referee, and 15*s.* for every night the Official Referee's clerk is absent from London on the business of the reference, together with the reasonable expenses of their travelling from London and back.

A deposit on account of expenses may be required before proceeding with the reference, or at any time during the course thereof; and a memorandum of the amount deposited shall be delivered to the party making the deposit.

The fees and expenses and deposit (if any) hereby authorized in respect of any reference shall be paid in the first instance by the party proceeding with the reference.

The Official Referees shall conform to all regulations that may be made from time to time by the Treasury for the accounting for all moneys received by them.

Dated this twenty-fourth day of April, one thousand eight hundred and seventy-seven.

CAIRNS, C.
JNO. MELLOR.
ROBT. LUSH.
HENRY MANISTY.

We certify that this Order is made with the concurrence of the Commissioners of Her Majesty's Treasury.

J. D. H. ELPHINSTONE.
ROW. WINN.

APPEALS TO HOUSE OF LORDS.*

FORM OF APPEAL, METHOD OF PROCEDURE, AND STANDING ORDERS.

Applicable to all Appeals presented in the House of Lords† on and after the 1st day of November, 1876.

Form of Appeal (Standing Order, No. 1.)

To the Right Honourable the Lords Spiritual and Temporal in Parliament assembled:

The humble petition and appeal of A.

Your petitioner humbly prays that the matter of the order (or orders, or judgment, or interlocutor) set forth in the schedule hereto‡ (or, so far as therein stated to be appealed against) may be reviewed before Her Majesty the Queen in her Court of Parliament, and that the said order (or, so far as aforesaid) may be reversed, varied, or altered, or that the petitioner may have such other relief (if specific relief be desired, it can be so stated in the prayer) in the premises as to Her Majesty the Queen, in her Court of Parliament, may seem meet; and that (here name the respondents) may be required to lodge such printed cases as they may be advised, and the circumstances of the cause may require, in answer to this appeal; and that service of such order on the solicitors in the cause of the said respondents may be deemed good service.

To be signed by two counsel.

Standing Order, No. II. (Certificate of Counsel.)

(Here insert schedule.)

Form of Schedule.

"From Her Majesty's Court of Appeal (England).

"In a certain cause (or matter) wherein A. was plaintiff and B. was defendant.

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* Printed in the W.N. 1876, Part II., 475.

† Order of House of Lords may be made order of High Court, *ex parte*. (*British Dynamite Co.* v. *Krebs*, 11 Ch. D. 448.)

‡ The schedule must set out the title of the parties to the cause or matter; and the decrees, orders, judgments, or interlocutors appealed against, and where the appeal is not against the whole decree, the part appealed against must be defined.

"The order appealed from is in the words following, viz. (set forth order complained of), or, the order referred to in the above prayer is in the words following, the portion appealed from being printed in italics (set forth order, the portion complained of being printed in italics)."

We humbly conceive this to be a proper case to be heard by your lordships by way of appeal.

Standing Order, No. II.

To be signed by two counsel.

Notice to respondents.

I, , clerk to Messrs. , of , solicitors for the appellants within named, hereby certify that on the day of , I served Messrs. , of , solicitors for , the within-named respondents, with a correct copy of the foregoing appeal, and with a notice that on the day of , or as soon after as conveniently may be, the petition of appeal would be presented to the House of Lords on behalf of the appellant.*

Directions for Agents.

Method of Procedure.

Presentation of the Appeal.—Order of Service,—*see* Standing Order No. III.

In accordance with the foregoing notice, the appeal, printed on parchment (quarto size), in such form as will enable paper copies thereof to be hereafter bound up with the printed cases, is to be lodged in the Parliament Office for presentation to the House, and (if the House be then sitting, or, if not, on the next ensuing meeting of the House) an order thereon for service on the respondents, or their solicitors, ordering the respondents to lodge cases in answer to the appeal, will be issued to the appellant's agent, such order, together with an affidavit of due service entered thereon, to be returned to the Parliament Office within the period granted to the appellant for lodging his printed case under Standing Order No. 5.

Security for Costs,—*see* Standing Order No. IV.

Each appellant, where there are more than one, is required to enter into the recognizance. The appellants are required to submit to the Clerk of the Parliaments within one week after the date of the presentation of the appeal (unless the sum of two hundred pounds, as required by the Stand-

* Not less than two clear days' notice to be given of the intention to present an appeal.

ing Order, be paid to the Receiver of Fees to the Parliament Office for payment into the fee fund of the House of Lords*) the names of the sureties who propose entering into the bond; and, in the event of a substitute being proposed to enter into the recognizance in lieu of the appellants, the name of such substitute. Two clear days' previous notice of the names so proposed (for bond and recognizance) is to be given to the solicitor or agent of the respondents, and at the time of submitting the said names to the Clerk of the Parliaments a certificate from the solicitor or agent of the appellants is to be lodged in the Parliament office, certifying his belief in the sufficiency of the sureties and substitutes so proposed. At the termination of one week from the lodgment of such certificate, the bond and recognizance are to be issued to the solicitor or agent of the appellants for execution before a commissioner appointed to administer oaths in the Supreme Court of Judicature in England, or a commissioner appointed to administer oaths in Chancery in Ireland, or before a justice of the peace in Scotland. The bond and the recognizance (whether entered into by the appellants or by a substitute) to be returned to the Parliament office within one week from the date of the issue thereof to the solicitor or agent of the appellants.

The solicitors of those respondents who purpose lodging printed cases in answer to the appeal should attend at the Parliament office for the purpose of ascertaining the due execution of the recognizance and bond, and entering their names in the appearance book. (Notice of the meeting of the Appeal Committee is only sent to the solicitors of respondents who have thus signified their appearance in the cause.)

Printed cases and appendix, and "setting down" Cause for Hearing, —*see* Standing Order, No. V.

In English appeals six weeks' time, and in Irish and Scotch appeals eight weeks' time, from the date of the presentation of the appeal, is granted to all parties to lodge printed cases and the appendices thereto.†

In appeals in which the parties are able to agree in their statement of the subject-matter, it is optional to lodge a joint case with reasons *pro* and *con.*, following the practice heretofore in use in common law appeals on a special case.

* All drafts and cheques to be made payable to "House of Lords Fee Fund," and to be crossed, "Bank of England, Western Branch."

† Petitions for extension of time, lodged during the recess, do not prevent the dismissal of an appeal. (For Form of Petition, see Appendix C.)

Appendix.

It is obligatory on the appellant, within the respective periods so limited as above, to lodge his printed cases, or the joint case before mentioned, and a printed appendix consisting of such documents, or parts thereof, used in evidence in the Court below, as may be necessary for reference on the argument of the appeal.

It is the duty of the appellant, with as little delay as possible after the presentation of the appeal, to furnish to the respondent a list of the proposed documents, and in due course a proof copy of the appendix. The proof is to be examined with the original documents by the respective solicitors of the parties. Ten copies of the appendix, as soon as printed, to be delivered to the solicitor of the respondent. The respondent is allowed to print any additional documents, used in evidence in the Court below, which may be necessary for the support of his case on the argument of the appeal, such documents to be paged consecutively with the appendix. (The proof to be examined, as aforesaid, by the respective solicitors, and prints delivered to the solicitor of the appellant.)

The costs incurred in printing the appendix will, in the first instance, be borne by the appellant, and the costs of the additional documents by the respondent, but these costs will ultimately be subject to the decision of the House with regard to the costs of the appeal.

Signature of counsel to case,—*see* Standing Order, No. V.

The case and appendix must be printed quarto size, with seven or eight letters in the margin for facilitating reference, and should be submitted in proof to the clerks in the Judicial office. Forty copies of the case and appendix are required to be lodged in the Parliament office; and subsequently, on the lodgment of the respondent's case, ten bound copies (see directions in the appendix hereto as to binding printed cases).

Where reference is made to a document printed in the appendix, the case must contain a marginal note of the page of the appendix containing such document.

There is no penalty on respondents who do not lodge their printed cases within the time limited by Standing Order No. V., but respondents can only appear at the bar on a printed case.

As soon as the printed cases of all parties and the appendix thereto have been lodged, it is optional for

either side to set down the cause for hearing, but it is obligatory on the appellant, upon the lodgment of his printed cases and the appendix, to set down the cause for hearing within the time limited by Standing Order No. V. (*ex parte* as to those respondents who have not already lodged printed cases, upon proof, by affidavit, of the due service of the before-mentioned "order of service" upon the respondents or their solicitors). A respondent who has lodged his printed cases is at liberty to set down the cause for hearing on the first sitting day after the expiration of the time limited by the Standing Order for lodging printed cases.

The cause will then be ripe for hearing, and will take its position on the effective cause list.

Standing Orders applicable to all Appeals presented to the House of Lords on or after the 1st day of November, 1876.

Standing Order I.

Ordered, that, except where otherwise provided by statute, no petition of appeal be received by this House unless the same be lodged in the Parliament office for presentation to the House within one year from the date of the last decree, order, judgment, or interlocutor appealed from. **Time limited for presenting Appeals.**

In cases in which the person entitled to appeal be within the age of one-and-twenty years, or covert, *non compos mentis*, imprisoned, or out of Great Britain and Ireland, such person may be at liberty to present his appeal to the House, provided that the same be lodged in the Parliament office within one year next after full age, discoverture, coming of sound mind, enlargement out of prison, or coming into Great Britain or Ireland. But in no case shall any person or persons be allowed a longer time, on account of mere absence, to present an appeal, than five years from the date of the last decree, order, judgment, or interlocutor appealed against. **Applicable to all Decrees, &c., pronounced on and after the 1st day of November, 1876.**

Standing Order II.

Ordered, that all petitions of appeal be signed, and the reasonableness thereof certified, by two counsel who shall have attended as counsel in the Court below, **Appeals to be signed and certified by counsel.**

or shall purpose attending as counsel at the hearing in this House.

STANDING ORDER III.

"Order of Service." Ordered, that the "order of service" issued upon the presentation of an appeal for service on the respondent or his solicitor, be returned to the Parliament office, together with an affidavit of due service entered thereon, within the time limited for the appellant to lodge his printed cases, unless within that period all the respondents shall have lodged their printed cases; in default, the appeal to stand dismissed.

STANDING ORDER IV.

Recognizance. Ordered, in all appeals that the appellant or appellants do give security to the Clerk of the Parliaments by recognizance to be entered into, in person or by substitute, to the Queen of the penalty of five hundred pounds, conditioned to pay to the respondent or respondents all such costs as may be ordered to be paid by the House in the matter of the appeal; and further, that the appellant or appellants do procure two sufficient sureties to the satisfaction of the Clerk of the Parliaments, to enter into a joint and several bond to the amount of two hundred pounds, or do pay in to the account of the fee fund of the House of Lords the sum of two hundred pounds; such bond, or such sum of two hundred pounds, to be subject to the order of the House with regard to the costs of the appeal: Ordered, that within one week after the presentation of the appeal the appellant or appellants do pay into the account of the fee fund of the House of Lords the said sum of two hundred pounds, or submit to the Clerk of the Parliaments the names of the sureties proposed to enter into the said bond; and, in the event of a substitute being proposed to enter into the said recognizance, the name of such substitute; two clear days' previous notice of the names so proposed for bond and recognizance to be given to the solicitor or agent of the respondent: Ordered, that the said bond and the recognizance (whether entered into by the appellants or by a substitute) be returned to the Parliament Office, duly executed, within one week from the date of the issue thereof to the solicitor or agent of the appellant or appellants. On default by the appellant or appellants in complying with the above conditions, the appeal to stand dismissed.

Standing Order V.

1. Ordered, that in English appeals the printed cases and the appendix thereto be lodged in the Parliament Office within six weeks from the date of the presentation of the appeal to the House; in Scotch and Irish appeals within eight weeks; and the appeal set down for hearing on the first sitting day after the expiration of those respective periods (or as soon before, at the option of either party, as all the printed cases and the appendix shall have been lodged); on default by the appellant the appeal to stand dismissed. **Printed cases, time limited for lodging, and for setting down the cause for hearing.**

2. Ordered, that in all appeals from Scotland the appellant alone, in his printed case or in the appendix thereto, shall lay before this House a printed copy of the record as authenticated by the Lord Ordinary; together with a supplement containing an account, without argument or statement of other facts, of the further steps which have been taken in the cause since the record was completed, and containing also copies of the interlocutors or parts of interlocutors complained of; and each party shall in their cases lay before the House a copy of the case presented by them respectively to the Court of Session, if any such case was presented there, with a short summary of any additional reasons upon which he means to insist; and if there shall have been no case presented to the Court of Session, then each party shall set forth in his case the reasons upon which he founds his argument, as shortly and succinctly as possible. **Scotch appeals.**

3. Ordered, that all printed cases be signed by one or more counsel, who shall have attended as counsel in the Court below, or shall purpose attending as counsel at the hearing in this House. **Printed cases to be signed by counsel.**

Standing Order VI.

Ordered, that all cross-appeals be presented to the House within the period allowed by Standing Order No. V. for lodging cases in the original appeal. **Cross-appeals.**

Standing Order VII.

Ordered, with regard to appeals in which the periods severally dating from the presentation of the appeal under Standing Orders Nos. III., IV., V., and VI., expire during the recess of the House, that such periods be extended to the third sitting day of the next ensuing meeting of the House. **Expiry of time during recess.**

Standing Order VIII.

Supplemental cases to be delivered in where appeals are revived or parties added.

Ordered, that where any party or parties to an appeal shall die pending the same, subsequently to the printed cases having been lodged, and the appeal shall be revived against his or her representative or representatives as the person or persons standing in the place of the person or persons so dying as aforesaid, a supplemental case shall be lodged by the party or parties so reviving the same respectively, stating the order or orders respectively made by the House in such case.

The like rule shall be observed by the appellant and respondent respectively, where any person or persons, party or parties in the Court below, have been omitted to be made a party or parties in the appeal before this House, and shall by leave of the House, upon petition or otherwise, be added as a party or parties to the said appeal after the printed cases in such appeal shall have been lodged.

Standing Order IX.

Scotch appeals.—Certificate of leave or difference of opinion to be signed by counsel on appeals.

Ordered, that when any petition of appeal shall be presented to this House from any interlocutory judgment of either division of the Lords of Session in Scotland, the counsel who shall sign the said petition, or two of the counsel for the party or parties in the Court below, shall sign a certificate or declaration, stating either that leave was given by that division of the judges pronouncing such interlocutory judgment to the appellant or appellants to present such petition of appeal, or that there was a difference of opinion amongst the judges of the said division pronouncing such interlocutory judgment.

Standing Order X.

Taxation of costs.

Ordered, that in all cases in which this House shall make any order for payment of costs by any party or parties in any cause without specifying the amount, the Clerk of the Parliaments or Clerk Assistant shall, upon the application of either party, appoint such person as he shall think fit to tax such costs, and the person so appointed may tax and ascertain the amount thereof, and shall report the same to the Clerk of the Parliaments or Clerk Assistant: And it is further ordered, that the same fees shall be demanded from and paid by the party applying for such taxation for and in respect thereof as are

now or shall be fixed by any resolution of this House concerning such fees; and the said person so appointed to tax such costs may, if he thinks fit, either add or deduct the whole or a part of such fees at the foot of his report: And the Clerk of the Parliaments or Clerk Assistant may give a certificate of such costs, expressing the amount so reported to him as aforesaid; and the amount in money certified by him in such certificate shall be the sum to be demanded and paid under or by virtue of such order as aforesaid for payment of costs.

Appendix A.

(Certificate of Sufficiency of Sureties, &c.)

Lodged in the Parliament office on the day of 18 .

In the House of Lords.

"A. and others *v.* B. and others."

In compliance with Standing Order No. IV., I (we) submit the names of (full name) of (address) and (full name) of (address) { as fit and proper sureties / or, as a fit and proper substitute } to enter into the { bond / recognizance } thereby required: and I (we) certify in { my / our } belief, that the said (full name) and the said (full name) { are each / is } worth upwards of { 200*l.* / 500*l.* } over and above { their / his } just debts.

This certificate may be signed by the country solicitor or agent of the appellants.

I (we) certify that a copy of the above certificate and two clear days' notice of the intention to lodge the same in the Parliament office has been served on the solicitors or agents of the respondents.

To be signed by the London solicitor or agent of the appellants.

Appendix B.

(Directions for Binding Printed Cases for the use of the Law Lords.)

1. Ten copies bound in purple cloth: two of the ten to be interleaved, as regards the cases only.

2. Short title of cause on the back.

3. Label on side, stating short title of cause and contents of the volume, thus:—

"A. and others *v.* B. and others."
Printed copy of the appeal.
Appellants' case.
Respondent B.'s case.
Respondent C.'s case.
Appendix.

4. The volume to be indented, and the names of the parties written on the indentations to their respective cases.

5. References to the reports of the cause in the Courts below, or the words "Not reported," to be written on the fly sheet.

6. The bound copies to be lodged immediately after the respondent's cases are delivered in.

The agents are requested to use their discretion as to the size of the volume, arrangement of the cases, and appendix. In dealing with bulky cases, it may be found advisable to bind the appendix as a separate volume, and also to divide the appellants' and respondents' cases into separate volumes.

It is the duty of the appellants' agent to carry out these directions.

Appendix C.

(Petition for Extension of Time to Lodge Cases, &c.)

(To be engrossed on foolscap paper, and (unless assent of respondent's agent be obtained) a copy, and two clear days' notice of intention to present, to be given to respondent's agent.)

In the House of Lords. (Insert short title of cause.)

To the Right Honourable the Lords Spiritual and Temporal in Parliament assembled:

The humble petition of the appellant .

Sheweth, That your petitioner presented petition of appeal on the day of complaining of (insert dates of orders or interlocutors complained of).

That the time allowed by Standing Order No. V. ((or) extended by your Lordships' order of (state date)) for the appellant to lodge his printed cases and the appendix, will expire on the (state date).

That your petitioner (set forth cause of delay).
Your petitioner therefore humbly prays that your Lordships will be pleased to grant him (set forth time required) further time to lodge his printed cases, and the appendix, and set down the cause for hearing. And your petitioner will ever pray.

Agents for the appellant.

We consent to the prayer of the above petition.

Agents for the respondent.

COUNTY COURT ACT, 1867.

30 & 31 VICT. c. 142, ss. 5, 7, 8, 10.

Costs not recoverable in Superior Courts where less than £20 on contract, or £10 on tort.

5. If in any action commenced after the passing of this Act in any of Her Majesty's Superior Courts of Record the plaintiff shall recover a sum not exceeding twenty pounds if the action is founded on contract, or ten pounds if founded on tort, whether by verdict, judgment by default, or on demurrer, or otherwise, he shall not be entitled to any costs of suit, unless the Judge certify on the record that there was sufficient reason for bringing such action in such Superior Court, or unless the Court or a Judge at Chambers shall by Rule or Order allow such costs.

As to this section, see note to Order LV., *ante*.

In certain cases Judge of Superior Courts may order cause to be tried in County Court.

7. Where in any action of contract brought or commenced in any of Her Majesty's Superior Courts of Common Law the claim endorsed on the writ does not exceed fifty pounds, or where such claim, though it originally exceeded fifty pounds, is reduced by payment, an admitted set-off, or otherwise, to a sum not exceeding fifty pounds, it shall be lawful for the defendant in the action, within eight days from the day upon which the writ shall have been served upon him, if the whole or part of the demand of the plaintiff be contested, to apply to a Judge at Chambers for a summons to the plaintiff to show cause why such action should not be tried in the County Court or one of the County Courts in which the action might have been commenced; and on the hearing of such summons the Judge shall, unless there be good cause to the contrary, order such action to be tried accordingly, and thereupon the plaintiff shall lodge the original writ and the order with the registrar of the County Court mentioned in the order, who shall appoint a day for the hearing of the cause, notice whereof shall be sent by post or otherwise by the registrar to both parties or their attorneys, and the cause and all pro-

ceedings therein shall be heard and taken in such County Court as if the action had been originally commenced in such County Court; and the costs of the parties in respect of proceedings subsequent to the order of the Judge of the Superior Court shall be allowed according to the scale of costs in use in the County Courts, and the costs of the proceedings previously had in the Superior Court shall be allowed according to the scale in use in such latter Court.

A claim for fifty pounds, and interest until payment or judgment, is a claim exceeding fifty pounds, and the action cannot be remitted to the County Court under the section. (*Insley* v. *Jones*, 4 Ex. D. 16.)

Where there is a counter-claim, which does exceed fifty pounds; on an application by the plaintiff to have the case remitted, the Judge must use his discretion. (*Cherry* v. *Andrews*, W. N. 1878, 52.)

The Judge has no jurisdiction to order the action to be tried in the County Court, where the claim is reduced below fifty pounds, by payment after action brought. (*Foster* v. *Usherwood*, 3 Ex. D. 1.) Until the plaintiff has lodged the writ and order with the registrar, the action remains in the Superior Court. (*Welply* v. *Buhl*, 3 Q. B. D. 80.) The registrar is to certify the result of the trial to the Superior Court, and judgment may be signed according to the certificate. (*Scutt* v. *Freeman*, 2 Q. B. D. 177.)

Proceedings in Equity may be transferred to County Courts which might have commenced therein.

8. Where any suit or proceedings shall be pending in the High Court of Chancery, which suit or proceeding might have been commenced in a County Court, it shall be lawful for any of the parties thereto to apply at chambers to the Judge to whose Court the said suit or proceeding shall be attached to have the same transferred to the County Court or one of the County Courts in which the same might have been commenced, and such Judge shall have power upon such application, or without such application, if he shall see fit, to make an order for such transfer, and thereupon such suit or proceeding shall be carried on in the County Court to which the same shall be ordered to be transferred, and the parties thereto shall have the same right of appeal that they would have had had the suit or proceeding been commenced in the County Court.

A County Court has power to grant an injunction, and to enforce obedience by committal. (*Martin* v. *Bannister*, 4 Q. B. D. 491.)

The County Court has no power to stay proceedings in the High Court in respect of claims provable in an administration action. (*Cobbold* v. *Pryke*, 4 Ex. D. 315.)

Actions for malicious prosecution, &c., brought in Superior Courts may be remitted to County Court by Judge.

10. It shall be lawful for any person against whom an action for malicious prosecution, illegal arrest, illegal distress, assault, false imprisonment, libel, slander, seduction, or other action of tort may be brought in a Superior Court to make an affidavit that the plaintiff has no visible means of paying the costs of the defendant should a verdict be not found for the plaintiff, and thereupon a Judge of the Court in which the action is brought shall have power to make an Order that unless the plaintiff shall, within a time to be therein mentioned, give full security for the defendant's costs to the satisfaction of one of the Masters of the said Court, or satisfy the Judge that he has a cause of action fit to be prosecuted in the Superior Court, all proceedings in the action shall be stayed, or in the event of the plaintiff being unable or unwilling to give such security, or failing to satisfy the Judge as aforesaid, that the cause be remitted for trial before a County Court to be therein named; and thereupon the plaintiff shall lodge the original writ and the order with the Registrar of such County Court, who shall appoint a day for the hearing of the cause, notice whereof shall be sent by post or otherwise by the registrar to both parties or their attorneys; and the County Court so named shall have all the same powers and jurisdiction with respect to the cause as if both parties had agreed, by a memorandum signed by them, that the said County Court should have power to try the said action, and the same had been commenced by plaint in the said County Court; and the costs of the parties in respect of the proceedings subsequent to the order of the Judge of the Superior Court shall be allowed according to the Scale of costs in use in the County Courts, and the costs of the proceedings in the Superior Court shall be allowed according to the scale in use in such latter Court.

Until the plaintiff has lodged the writ with the Registrar of the County Court, the action remains in the Superior Court. (*Welply* v. *Buhl*, 3 Q. B. D., 253.)

The County Court Judge should take cognizance of the pleadings as well as the particulars under the County Court Rules. (*Johnson* v. *Palmer*, 4 C. P. D., 258.)

The Court is very unwilling to interfere with the discretion of the Judge at Chambers. (*Jennings* v. *London General Omnibus Co.*, 30 L. T. 266.)

TIME TABLE.

ORDER LVII. deals with time generally; and of the enlargement or abridgment of the period allowed for taking any proceeding. The time for delivering or amending any pleading may be enlarged by consent in writing without any application to the Court by r. 6*a*. And wide powers are given to the Court under r. 6. The times and hours during which the offices are open are regulated by Order LXI., p. 265.

The hours at which summonses are returnable are regulated by Order LIV. p. 239.

ACCOUNT, Application for.	After time for appearance has expired.	O. xv. r. 2, p. 125.
AFFIDAVIT, Filing, where evidence taken by consent.	By plaintiff within 14 days after consent; list of, to be delivered.	O. xxxviii. r. 1, p. 199.
	By defendant within 14 days after delivery of above list, or such other time as parties may agree upon or Judge at Chambers allow.	O. xxxviii. r. 2, p. 199.
	By plaintiff in reply within 7 days after the expiration of the said 14 days, or such other time as aforesaid.	O. xxxviii. r. 3, p. 199.
Notice to cross-examine on.	Within 14 days after time for filing affidavits in reply, or a Court or Judge may specially appoint.	O. xxxviii. r. 4, p. 199.
In Probate actions.	In verification of indorsement on writ before issue.	O. v. r. 10, p. 104.
In Admiralty actions.	Before issue of warrant of arrest.	O. v. r. 11, p. 105.
Ne exeat regno, in support of.	Copies to be furnished on request, or such time as may be specified or directed.	R.S.C. (Costs). O. v. r. 10.
In answer to interrogatories.	To be filed within 10 days, or such other time as a Judge may allow.	O. xxxi. r. 6, p. 170.
AMENDMENT OF PLEADINGS.	By leave or order at any time.	O. xxvii. r. 1, p. 157.
Of statement of claim.	Once without leave before time for reply; or, if no defence delivered, 4 weeks from appearance of defendant who shall have last appeared.	O. xxvii. r. 2, p. 158.

AMENDMENT—*cont.*		
Of counter-claim.	Without leave before time for pleading to reply, and before pleading to reply; or if no reply, **28** days days from defence.	O. xxvii. r.3, p.158.
In cases not otherwise provided for.	At any time by leave . . .	O. xxvii. r.6, p.159.
By opposite party, in answer.	By leave within such time as may seem just.	O. xxvii. r.5, p.158.
Avoidance of order giving leave.	**14** days from date of order, if no other time be specified.	O. xxvii. r.7, p.159.
Disallowance, application for.	Within **8** days after the delivery of the amended pleading.	O. xxvii. r.4, p.158.
Delivery of amended pleading.	Within time allowed for amendment.	O. xxvii. r. 10, p. 159.
AMENDMENT OF NOTICE OF APPEAL.	At any time as the Court may think fit.	O. lviii. r.3, p.250.
APPEAL,		
From County Court. .	Within **8** days from the decision appealed against.	Sec.6, County Court Act, 1875, p.248.
From District Registrar.	**4** days from the decision appealed against.	O. xxxv. r. 7, p.182.
From Judge at Chambers in Common Law Divisions.	Within **8** days from the decision appealed against.	O. liv. r. 6.
From Judge at Chambers in Chancery Division.	Application for re-hearing in Court within **21** days of the making the order.	P. 256.
From Master.	Within **4** days from the decision appealed against.	O. liv. r. 4.
Ex parte application.	**4** days from refusal of application in the Court below.	O. lviii. r.10, p.253.
APPEAL TO COURT OF APPEAL,		
From interlocutory order.	Within **21** days from order .	O. lviii. r.15, p.255.
From final judgment.	Within **1** year	O. lviii. r.15, p.255.
Length of notice, from final or interlocutory judgment.	**14** days	O. lviii. r. 4, p. 251.
Length of notice, from interlocutory order.	**4** days	O. lviii. r. 4, p. 251.
Winding up, bankruptcy or matters other than actions.	Same as from interlocutory order.	O. lviii. r. 9, p. 253.
Notice of appeal may be amended.	At any time as the Court may think fit.	O. lviii. r. 3, p. 250.
Notice by respondent of cross appeal.	**8** days on final judgment. . **2** days from interlocutory order.	O. lviii. r. 7, p. 252.

APPEARANCE,		
By defendant within the jurisdictton.	**8** days from service of the writ is the time thereby limited.	O. ii. r. 3, p. 97.
	But he may appear subsequently at any time before judgment.	O. xii. r. 15, p. 118.
Without the jurisdiction.	The time is limited by the order giving leave for service.	O. xi. r. 4, p 115.
By third party . . .	Within **8** days from the service of the notice upon him.	O. xvi. r. 20, p. 135.
By party added on change of interest.	In the same manner as to a writ of summons.	O. L. r. 5, p. 228.
Application by party added to vary above order.	**12** days from service of order, or, if necessary to have a guardian *ad litem* appointed, then **12** days from his appointment.	O. L. rr. 6, 7, p. 228.
By party brought in by counter-claim.	Same regulations as to party summoned by writ of summons.	O. xxii. r. 7, p. 153.
In recovery of land by person not defendant.	Notice to be given forthwith on obtaining leave.	O. xii. r. 20, p. 119.
Where defence limited to part.	Notice thereof to be given within **4** days after appearance.	O. xii. r. 21, p. 119.
COUNTER-CLAIM,		
Application to exclude	Any time before reply . . .	O. xxii. r. 9, p. 154.
Appearance by party brought in by . .	Same as party served with writ of summons.	O. xxii. r. 7, p. 153.
DEFENCE, STATEMENT OF,		
Where statement of claim delivered.	Within **8** days from the delivery of the statement of claim or from the time limited for appearance, whichever be last; unless extended.	O. xxii. r. 1, p. 152.
Where statement of claim not required.	**8** days from appearance, unless time extended.	O. xxii. r. 2, p. 152.
Where leave given to defend.	Within time limited by order, or if no time limited, then **8** days from order.	O. xxii. r. 2, p. 152.
DEMURRER,		
Delivery of.	Within same time as any other pleading.	O. xxviii. r. 3, p. 160.
Entry of, for argument.	May be entered immediately; if not entered within **10** days, demurrer held sufficient.	O. xxviii. r. 6, p. 161.
Notice of entry . .	On the day of entry . . .	„ „ „
DISTRICT REGISTRY,		
Removal of action from, where no special indorsement.	Any time after appearance and before defence, and before expiration of time for its delivery.	O. xxxv. r. 11, p. 183.

DISTRICT REG.—*cont.* Where writ specially indorsed.	If plaintiff, within four days, give no notice of an application under O. xiv., then before defence and before expiration of time for its delivery. If plaintiff do make the above, then any time after leave to defend, before defence, and before expiration of time for its delivery.	O. xxxv. r. 11, p. 183.
ENTRY FOR TRIAL.	Within 6 days after notice of trial, or notice to be no longer in force.	O. xxxvi. r. 10*a*., p. 188.
EXECUTION. . . . See Writ of Execution.		
GUARDIAN AD LITEM. Notice of application for appointment.	After expiration of time limited for appearance and 6 clear days before the hearing.	O. xiii. r. 1, p. 119.
Application to vary order as to parties under disability, added under O. L.	12 days from appointment of guardian.	O. L. r. 7, p. 228.
INSPECTION OF DOCUMENTS.	If all the documents referred to in the notice have been set forth in his affidavit of documents within 2 days, and if any have not been set forth, then within 4 days from service of notice the party served shall appoint a time within 3 days in which the documents may be inspected.	O. xxxi. r. 16, p. 174.
INTERPLEADER. . .	Any time after delivery of writ of summons and before defence.	O. ii. r. 2, p. 87.
INTERROGATORIES, Delivery of, by plaintiff.	At any time between delivery of statement of claim and the close of the pleadings.	O. xxxi. r. 1, p. 168, and see note as to delivery at other times.
By defendant.	At any time between delivery of defence and the close of the pleadings,	
Application to strike out.	Within 4 days after service.	O. xxxi. r. 5, p. 170.
Affidavit in answer. See Affidavit.		

JOINDER OF ISSUE.	If not delivered with reply, within **4** days after the delivery of the previous pleading.	O. xxiv. p. 156.
JUDGMENT.		
Application for leave to enter final judgment, undr O. xiv. r. 1.	By summons returnable not less than **2** clear days after service.	O. xiv. r. 2, p. 123.
Application to set aside when obtained by default of appearance at trial.	Within **6** days after the trial, either at the assizes or in Middlesex.	O. xxxvi. r. 20, p. 191.
JUDGMENT, MOTION FOR.		
Where leave reserved.	To be set down and notice given by the party, if no other time limited, within **10** days after trial.	O. xl. r. 2, p. 203.
Where no leave reserved.	If plaintiff do not set down and give notice within **10** days, defendant may set down and give notice.	O. xl. r. 3, p. 204.
When issues ordered to be determined have been determined.	If plaintiff do not set down within **10** days after his right to do so has arisen, then defendant may, and give notice to other parties.	O. xl. r. 7, p. 205.
When some issues only have been determined.	By leave, without waiting for determination of others.	O. xl. r. 8, p. 205.
Limitation of time for moving.	**1** year from time party first entitled, unless by leave.	O. xl. r. 9, p. 206.
On admissions in the pleadings.	As soon as the right to the relief appears.	O. xl. r. 11, p. 206.
	General powers of adjournment, &c.	O. xl. r. 10, p. 206.
JURY. See Notice of Trial		
NEW TRIAL,		
If trial at London or Westminster, by rule nisi within **8** days.	Within **4** days after, or on the first subsequent day on which a Divisional Court sits, to which such application can be made.	O. xxxix. r. 1*a*., p. 201. Order nisi acts as stay of proceedings, r. 5, p. 202.
If trial elsewhere, by rule nisi within **8** days.	Within **7** days after last sitting on circuits, or within the first **4** days of the next following sittings, if such day occur within a week of vacation.	
Copy, order to be served	Within **4** days from the making the order.	O. xxxix. r. 2, p. 202.
NOTICE OF MOTION	**2** clear days at least . . .	O. liii. r. 4, p. 235.
Unless by leave.	He may be served any time after time limited for appearance, without leave, or by leave along with the writ or any time after.	O. liii. rr. 7, 8, p. 236.
When defendant has not appeared.		

NOTICE OF TRIAL, By plaintiff	With reply, or at any time within **6** weeks after the close of the pleadings.	O. xxxvi. rr. 3, 4, pp. 185, 186.
(Notice by defendant that he requires a Jury.)	Within **4** days from the service of the notice of trial.	O. xxxvi. r. 3, p. 185.
By defendant. . . .	If plaintiff does not give notice within **6** weeks after the close of the pleadings, defendant may, and specify a mode.	O. xxxvi. r. 4, p. 186.
Long and short notice.	**10** days' notice, unless the party has consented to take **4** days' notice. Notice to be given before entering the action.	O. xxxvi. rr. 9, 10, p. 188.
Change of specified mode.	In case neither plaintiff nor defendant has given notice that he desires a jury, within **4** days from the time of service of notice of trial, or such extended time as may be allowed.	O. xxxvi. r. 5, p. 187.
PAYMENT INTO COURT, Notice of acceptance .	Any time before defence and after by leave, if before defence notice to be given within **4** days from receipt of notice, or if first stated in defence then before reply.	O. xxx. rr. 1, 2, pp. 166, 167. O. xxx. r. 4, p. 167.
	If the sum be accepted in satisfaction of the whole cause of action plaintiff may tax his costs and sign judgment for them if not paid within **48** hours.	
PRELIMINARY ACT, In Admiralty Actions .	To be filed before any pleading delivered, unless otherwise ordered.	O. xix. r. 30, p. 148.
RECOVERY OF LAND. See Appearance.		
REPLY,	Within **3** weeks of defence, or the last of the defences.	O. xxiv. r. 1, p. 156.
By party brought in by counter-claim.	Same as if he had been served with statement of claim.	O. xxii. r. 8, p. 154.
REJOINDER	Only by leave, and then in the absence of any directions within **4** days from the last pleading.	O. xxiv. rr. 2, 3, p. 156.

STATEMENT OF CLAIM.	To be delivered within **6** weeks from appearance, unless otherwise ordered.	O. xxi. r. 1, p.150.
If not dispensed with.		
New defendant to have copy.	With the writ of summons or notice, or afterwards, within **4** days after appearance.	O. xvi. r. 16, p. 133.
Notice in lieu of, and further statement ordered.	Within such time as limited by the order, or if no time mentioned then same as statement of claim.	O. xxi. r. 4, p. 151.
In Probate actions.	Within **6** weeks from appearance or time limited for appearance; provided that when a defendant has appeared, plaintiff need not deliver till **8** days after affidavit of scripts filed.	
In Admiralty actions.	Within **12** days from appearance.	O. xxi. r. 3, p.151.
TRIAL. *See* Notice of Trial.		
WARRANT OF ARREST.	To be filed within **6** days from service.	O. ix. r. 9, p. 111.
WRIT OF SUMMONS.	In force for **12** months, but may be renewed for **6** months.	O. viii. r. 1, p. 107
Concurrent writ may be issued.	Any time during currency of the original writ.	O. vi. r. 1, p.106.
Date of service.	To be indorsed within **3** days by the person serving.	O. ix. r. 13, p. 112.

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